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THE CRIMINAL JUSTICE SYSTEM RESPONSE TO WIFE ASSAULT

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ABSTRACT

The problem of wife assault is serious and widespread in Canada. Domestic dispute calls represent the largest category of requests for police assistance in spite of the fact that fewer than ten per cent of wife assault cases may come to police attention. This study reviews current practices, policies and programmes which comprise the justice system's response to wife assault. The reluctance of police, justices of the peace, Crown attorneys, judges and juries to respond to wife assault as a serious crime is discussed. Evidentiary and other legal issues are also reviewed.

It is concluded that arrest rates for wife assault may be too low and that police often do not arrest even when sufficient evidence is present for charges of assault. Furthermore, police often do not file reports on wife assault cases even though justices of the peace often require police reports before laying an information. Attitudes of some Crown prosecutors and judges contribute further to the tendency of the criminal justice system to treat wife assault leniently. Recommendations are made for changes in attitudes and actions of criminal justice system personnel in order to provide adequate protection for assaulted women.

This study also describes a variety of system models for responding to wife assault and discusses the advantages and disadvantages of each. Moreover, treatment programmes for wife assaulters are described and an appendix lists studies which would provide a sound empirical basis for future policy.

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EXECUTIVE SUMMARY

The purpose of this report is to examine the current response of the criminal justice system to the problem of wife assault. "Wife assault" in this report refers to instances in which a man physically abuses or threatens violence against a woman with whom he is or has been intimately involved and with whom he is or has been living. The problem of wife assault is a serious one. It has been estimated that between forty and seventy per cent of all violent crime in North America occurs between people who live together, and in Canada it has been estimated that 750,000 couples have one or more violent disputes each year. Domestic dispute calls are the largest category of requests for police service even though it is estimated that fewer than ten per cent of violent domestic incidents are reported to police.

Much of the literature reviewed indicates that the police have traditionally been both uneasy with and reluctant to respond to domestic disturbance calls despite the potential seriousness of such calls. Police officers may be aware of the danger which these calls pose for them, but their uneasiness and reluctance in responding appears to stem also from certain widely held beliefs about family violence. The police, like other segments of society, may hold the view that wife assaults are private matters and that there is little the criminal justice system can do because the woman will inevitably drop the charges. This report challenges these beliefs.

Some evidence suggests that early police intervention with violent couples can prevent more serious violence, and this has led to a proliferation of conflict management training for police officers. On the other hand, it has been argued that there has

been an over-reliance on techniques of conflict management and that this has caused police arrest rates in cases of wife assault to be too low. The position taken in this report is that police arrest rates are too low but that this predates conflict management training and is due more to prevailing attitudes and beliefs. However, we agree that police training should clearly differentiate domestic dispute situations where conflict management techniques are required from situations where an assault has occurred and legal procedures should be initiated. Police policy and attitudes should reflect an awareness of this distinction and a readiness to act to protect assaulted wives.

Several intervention programs for police use in domestic dispute and wife assault cases are compared. Firm conclusions are difficult to draw because some police training programs, for example, claim success on the basis of unproven increases in officer safety and adopt the questionable (and perhaps unrealistic) criterion of lowered arrest rates as a program goal.

Issues surrounding the argument for increased arrest rates for wife assault are considered. The issues are complex, particularly with regard to the deterrence function of arrest in such cases. It is concluded that some exploratory studies are required; but, nevertheless, the available information supports a policy of making immediate arrests in all wife assault cases where there is evidence to support charging with an indictable assault offence. In addition, in all cases where evidence exists for laying an information for a summary assault offence, the state should proceed with the laying of charges.

Another issue which is examined concerns whether all police should be trained in intervention skills, whether there should be specially trained police for wife assault cases, or whether a combination of police and civilian professionals should be used. The generalist/specialist model currently in use in London, Ontario, is recommended. Regardless of which police

model is used, however, we strongly recommend that police officers carry information cards which can be given to victims of wife assault. These cards should provide phone numbers for shelters, transition houses, and legal assistance; and they should be given to women in the absence of their assailants. We recommend that police should take the further steps of notifying special services for assaulted wives of the fact that they have given a card to a particular victim and provide the agency with an indication of the woman's willingness to have the agency contact her.

Those women who do proceed with charges are likely to encounter a number of other problems with the criminal justice system. Justices of the peace are often reluctant to accept the laying of an information in cases of wife assault. Crown attorneys also seem to assign a low priority to wife assault cases, and judges have tended to deal leniently with wife assaulters. Criminal justice system personnel generally are unaware of the issues currently surronding the problem of wife assault. Clear policy guidelines and special training about wife assault are needed by professionals in the criminal justice system.

In addition, a variety of other legal problems exists. Protection orders are difficult to obtain and their enforcement is problematic. Thus they do not always serve their intended purpose. Some evidentiary rules do not take into account the special nature of wife assaults as crimes occurring in private and do not allow fair hearing for assaulted wives. The compellability of spouses is unclear in Canada and varies from province to province. Those who view wife assault as a crime against the state argue that the responsibility for proceeding with charges and choosing to testify in court should be removed from the victim and that the state should intervene at an early point.

A review of some innovative programs dealing with wife assault in the United States includes programs in cities in New York, California, Pennsylvania, Florida, Ohio, and Arizona. These programs generally take the position that wife assault is a crime against the state and that the state should proceed with laying charges as well as issuing and enforcing protection orders.

The outcome of court process is also addressed in this report, and it is concluded that therapeutic groups for assaultive males are required. The form that such therapy should take is discussed and a form is recommended that best fits with court objectives and has the greatest promise for reducing violent behaviour. Although at present no evaluations are available of the effectiveness of such therapeutic groups, their development is seen as necessary.

Finally, some models for criminal justice system response to wife assault are proposed. The first model involves the use of police specialist teams, inter-agency management teams, a women's advocate service and specialized therapy for assaulters. The second model deals with the problem of wife assault by attempting to change existing agency policies and the attitudes of personnel in order to maximize responsiveness to the problem.

The summary chapter brings together many of the recommendations. It is followed by a research appendix which suggests some crucial research directions that would aid in the formulation of sound policy.

CHAPTER I

Introduction: The Magnitude of the Problem

The purpose of this report is to examine issues arising from the uses of the criminal justice system to deal with the problem of assaults against wives. "Wife assault" in this report refers to instances in which a man physically abuses or threatens violence against a woman with whom he is or has been intimately involved and with whom he is or has been living.

Incidence studies on wife assaults unanimously indicate the seriousness and high frequency of this form of violence. The following statistics suggest the magnitude of the problem:

A. Homicides and Assaults

1. In North America cities 40-70% of homicides and assaults are "domestic" in origin (i.e. occur between intimates or people living in the same household) (Straus, 1977).

2. In Canada, during the period 1969-1975, 51% of all homicides were "domestic", 16% of all homicides were "spouse slayings".*

3. In Canada, during the period 1961-1975, 27.4% of all homicides took place within the "immediate family" (another 7.7% in common law relationships), in 51.2% of

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* See reports of Dominion Bureau of Statistics and (later) Statistics Canada. The U.S. National Commission on the Causes and Prevention of Violence (1969) reported that husbands and wives killed each other with equal frequency (but that wives were seven times more likely to have killed in self defence); however, a Canadian study by Bell and Benjamin (1976) reported that the wife was the victim in 83% of spouse homicides.

these immediate family homicides the victim was married to the offender. In effect, 20% of all homicides in Canada were spouse slayings. (Bell and Benjamin, 1976).

4. In a 1956 study of homicides in Philadelphia, it was found that 41% of the female victims were killed by their husbands as compared to 11% of the male victims who were killed by their wives. It was also noted that there were greater degrees of violence when husbands killed their wives (Wolfgang, 1956).

5. A survey with a nationally representative sample of 2,143 couples in the U.S. revealed that 17% had had a "violent episode" during the preceding 12 months. (Straus, et al., 1980). Extrapolated to the entire U.S. population this would mean 7 1/2 million couples per year have at least one (or more) violent episodes (assuming no underreporting).

In terms of wife assault, the incidence of the problem goes far beyond the number of reported assaults since shame, embarrassment, a general sense of helplessness, and other factors result in few women reporting such assaults (Walker, 1979).

MacLeod (1980) has devised an imaginative system for estimating the incidence of spouse abuse in Canada. She first combines statistics on transition house incidence of battering with divorce statistics on physical cruelty. She then adjusts the transition house figures to allow for gaps in geographic coverage. This provides an estimate of the total reported cases. Unfortunately, we still do not know the exact ratio of reported to unreported cases, such a ratio depending on an extensive survey with a reasonably large and representative sample similar to the victimization surveys done in the U.S. Such surveys provide a ratio of reported/unreported incidences of the behaviour under study. MacLeod reports a ratio of 10 unreported cases for each call by a battered wife to police based on an unpublished study by Handleman and Ward (1976), but the reader has no basis for assessing the validity of this estimate. U.S. victim surveys generally found a ratio of 5 to 1 for unreported to reported incidents (Loving and Farmer, 1980), although a recent survey in Kentucky (Schulman, 1979) found that only 76 of 881 violent domestic incidents* had been reported to police (only 8.6% of the total reported via the survey). Hence, although the incidence statistics for wife assaults indicate that this phenomenon is widespread, these statistics still represent only the tip of the iceberg. Assaults that go unreported increase the magnitude of the problem by approximately ten times.

B. Wife Assault and the Police

As the only twenty-four hour social service with a fast response time and powers of arrest, the police are frequently the first to be called on wife assault cases. Over a third of all citizen requests for police service to the Vancouver Police Department during a six month period in 1975 were for "domestic disturbance" calls (Levens and Dutton, 1977). In London, Ontario the largest category (47.9%) of disturbance calls are cases of husbands assaulting wives (Jaffe and Thompson, 1979.)

In many jurisdictions police are reluctant to handle such calls. Despite their extremely high violence potential, police in Vancouver, B.C. responded only 47.9% of the time to husband-wife disturbance calls, and then usually on a "priority two" basis (Levens and Dutton, 1977). From one perspective the police reluctance is understandable; these calls are ambiguous in nature, straddling the police options of law enforcement (if an assault has occurred) and order maintenance (if it has not), with the added problem that police do not know which response is appropriate until they have entered the situation (Dutton, 1977). Furthermore, handling such calls is both dangerous and stressful: 14.6% of the Canadian police officers killed (1961-1973) were killed while handling domestic disputes, while in the U.S., 22% of police fatalities occur handling domestic disputes (Parnas, 1967).

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* defined as sufficiently violent as to provide legal grounds for common assault.

In addition, police believe that if they do make arrests on wife assault calls, the charges will eventually be dropped so that their efforts will be in vain (Dutton and Levens, 1979). They attribute this dropping of charges to both the victim, and the criminal justice system itself, which often acts to discourage assaulted women from proceeding with charges.

Much of the literature reviewed also suggests that police reluctance and uneasiness with handling domestic disturbance calls stem not only from the violence potential and ambiguity surrounding a "proper" response, but from widely held attitudes about family violence. The police, like other segments of society, may hold the view that wife assaults are private matters and that there is little the criminal justice system can do. Finally, police advancement and promotion policies probably do not include exemplary service in handling domestic disturbance calls.

On the other hand, more effective service on such calls is necessary if domestic assaults are to be reduced. A Kansas City police study, which found frequent prior police contact with males who subsequently assaulted their wives, raises the issue of whether a more effective initial police response might have decreased the subsequent violence (Wilt and Breedlove, 1977). In the section on police we will discuss what that response might be. However, for the present, we can conclude that domestic violence in general and wife assaults in particular present a serious concern for police departments in terms of the violence to women, the potential violence to officers themselves, the heavy demand for service and the difficulties in articulating such service with the police role (Dutton, 1977). Many police officers equate the handling of domestic disturbance calls with social work and are reluctant to do more than temporarily "cool down" the argument and leave, although the potential for recurring violence is high.

In addition, studies on the criminal justice system handling of wife assaults suggest that the problem for the criminal justice system is not specific to the police, and that justices of the peace, Crown prosecutors, judges, juries and the law itself are equally involved. Justices of the peace, it is said, refuse to take assaulted wives seriously; Crown prosecutors view the problem as less serious than assault between strangers; judges and juries are loathe to break up the family unit. Furthermore, restraining orders are routinely violated without penalty and a variety of roadblocks confront the battered wife who seeks legal protection from her spouse.

At present we are not dealing in an effective fashion (one that protects women without breaking up all families who come to the attention of the criminal justice system and incarcerating all men who have assaulted) with the serious, high incidence problem of wife assault. It has been said that "the state has no place in the bedrooms of the nation", yet violent crime often occurs in those bedrooms. How can the state best act to protect citizens from violent crime occurring in "private" family situations? What is the responsibility of the victim to initiate state intervention and at what point should the state intercede? To what extent is the criminal justice system either necessary or sufficient for such state intervention, and if the criminal justice system is to be used to control the problem of wife assault, how may it be used most effectively? These are some of the questions which we will attempt to answer in the following pages. We will examine a variety of new solutions in the form of legal remedies, policy changes and attitude changes amongst actors working in the criminal justice system. These possible solutions have emerged over the last decade, and we will evaluate each in an attempt to integrate them into a comprehensive model that involves all relevent components of the criminal justice system.

CHAPTER II

The Police Response to Wife Assault

A. Current Practices

1. The U.S.

Many studies of the police response to domestic violence have not concentrated specifically on wife assaults but on the more ambiguous category of "domestic disturbance calls". This is an issue in itself as some people feel that the term "domestic disturbance" is a euphemism that masks the serious violence involved in wife assaults. In their own defense police often state that they do not only handle assaults on domestic disturbance calls and that the presumption that an assault has occurred could lead to a high incidence of false arrest. Police feel that their chief function on domestic disturbance calls is to effect a temporary solution toward stopping the conflict and any violence that may develop. They generally prefer to leave tasks such as interviewing, mediation or referral to social workers (Dutton and Levens, 1979).

Bard (1970), was especially interested in the objective of diminishing "iatrogenic violence" (violence inadvertently caused by the social agent sent to prevent violence), the often reported phenomenon of citizens turning their violence on police during a domestic argument where the police had intervened. Bard and Zacker (1976) identified seven third-party intervention approaches used by police officers untrained in conflict management. The object of their research was to determine whether such approaches could be taught systematically. The major finding was that training in three selected intervention approaches (authority, negotiation, and counselling) generally led to improvement in an officer's ability to apply those approaches. After using the three approaches a majority of officers viewed negotiation as the most important one for police recruits to learn. Although several officers selected counselling as the most important, none selected authority. Bard's two main conclusions were:

(a) Repeated use of the authority approach resulted in officers viewing it less favorably, while such use of the negotiation approach resulted in officers viewing it more favorably.

(b) Repeated use of counselling resulted in a more favorable attitude toward the approach, although the officers were originally less proficient as counselling was the approach least familiar to them (Bard, 1970).

Authority was defined as the approach which arbitrarily imposed an end to the conflict through either implicit or explicit threat of arrest. Negotiation was seen as a mediating technique which dealt with the surface issue at hand, focusing exclusively upon the content of the conflict itself. Counselling, on the other hand, penetrated the surface issues of the conflict and was designed to bring about a deeper understanding of the basic situation and the consequences of certain behavior.

Bard eventually established the first training program in North America for police domestic disturbance intervention. He claimed that his training substantially reduced violence directed toward officers while handling domestics but that claim has been disputed (Liebman and Schwartz, 1972) and Bard's program has been criticized (Loving and Farmer, 1980). The shortcomings include 1) a lack of long term follow-up of the effects on families of having been served by Bard's specially trained unit, and 2) a failure to determine which skills were effective in which types of disputes, and 3) the difficulty in determining which skills are necessary prerequisites for a police officer's proficiency in this type of "specialist" program. Liebman and Schwartz (1972) report that Bard's program demonstrated no significant impact on the overall problem or on the officer's safety. Apart from the faults listed above, Bard's program seems also to have suffered from 1) a lack of clear policy on when a "domestic dispute" is an assault and, accordingly, when an arrest should be made; and 2) failure to be able to evaluate what percentage of wife assaults are coming to police attention, are receiving adequate intervention and are subsequently being proceeded with in court or via social agencies, counselling, etc. This latter criticism could be extended to current knowledge about the "best" way to clear a dispute call. For a variety of reasons, a proper evaluation of alternatives both within and outside the criminal justice system has not been done (See Dutton and Levens, 1979).

Indeed, most U.S. evaluations of crisis intervention training have been inconclusive. Wylie, _et_ _al_. (1976) evaluated crisis intervention training in six cities. They failed to detect significant changes after training in the number of family-related assaults, or in the number of injuries to police officers in the cities studies. There was, however, some indication of a trand toward a decreasing proportion of arrests for family related crimes. This statistic could be taken to mean a decrease in the police use of arrest in domestic assaults following crisis intervention training or a decrease in family related crimes. An evaluation of crisis intervention training in California (California Council on Criminal Justice, 1974) reported more positive attitudes towards handling domestics by police officers themselves but not reduction in the number of persons who became involved in the criminal justice system as a result of family fights. The evaluation called for further study on "injury data to officers and citizens", repeat calls from citizens and general replication.

Some social scientists looking at the issue of domestic violence have attacked the traditional do-nothing police policy, arguing that it is indeed the function of the police to arbitrate, undertake negotiations, and counsel people in marital difficulties as mental health professionals (Bard, 1972). This approach still made arrests unfashionable, often by dogmatic assertion. Fagin (1978), for example, concludes that an arrest is usually an indication of an officer's "inadequate training and skills", and that "arrest only intensifies an already emotionally intense and deteriorating interpersonal relationship". Bard's position is somewhat less strongly stated, but still clearly against arrest in most family dispute cases: "policies and practices which encourage officers to seek alternatives to arrest are consistent both with progressive legal thought and with the practical realities of invoking the criminal process" (Bard, 1978). Bard's New York City study interpreted a lower arrest rate for family disputes as a measure of that program's success. Subsequent programs in Rochester (University of Rochester), Marin County California (Ketterman and Kravitz, 1978) and elsewhere adopted reduced arrests as an explicit program goal. One evaluation of family crisis intervention training in six cities even claimed success, despite no decline in the number of injuries to officers, because the number of arrests declined. At $30 per arrest in processing time, the report concluded, the new (less arrests) approach to family violence produced significant savings (Wylie, et al. 1976)!

Few of the replications of the Bard project were subjected to rigorous evaluation, and none of them collected data as extensively as the initial study. At least two of them, however, reported some favorable outcome measures (California Council on Criminal Justice, 1974). A program in Hayward, California showed a reduction in the number of repeat calls and an increase in the average amount of time between repeat calls.

Bard conducted a second, less ambitious project in Norwalk that abandoned assault as an outcome measure and substituted officer evaluation of the value of different approaches (authority, mediation - including arbitration and negotiation - and counselling) to family crisis interventions (Bard and Zacker, 1976). The value of the findings are limited because there is no evidence that the officer evaluations of effectiveness are related to subsequent violence. The same is true of Fagin's (1978) observational study in three midwestern police agencies, which found that the more actively helpful police officers were during the 108 observed dispute interventions, the happier citizens were (in Fagin's assessment) at the conclusion of the encounter. Whether the appearance of happiness is predictive of less violence in the future is unknown.

The premise of these evaluation studies is that mediation and counselling, and not arrest, are the methods most likely to resolve family problems, whether that response is provided by police themselves, social work consultants called to the scene, or social workers with whom the police make appointments for the citizens. The evaluations also assumed that all disputing couples were alike, making no effort to distinquish the method of response and its outcomes for verbal disputes and violent disputes. The programs evaluated all adopted a bias against arrest, a practice that was rarely used in any case. These studies were therefore limited to comparing the new active "talking" method to some of the old short-term solutions identified by Parnas (1971) and Black (1979). None of them could compare the outcomes of arrest and non-arrest responses.

Parnas (1971) studied the Chicago police department response to domestic violence, and found a lack of officient policy regarding domestics despite the fact that these calls constituted over half the total calls for service. Only 1 of 490 recruit training hours was devoted to domestic disturbances and this hour stressed the violence potential for the officer but not for the victim. Little or no coordination between police and courts or police and social agencies existed. This descriptive study by Parnas also suggested several reasons why most domestic disturbances are handled without arrest even though the legal requirements for simple assault and battery may be present. These reasons were:

(a) The victim frequently does not want the offender arrested but may call the police to:

(1) Scare the offender into behaving himself;

(2) Get the offender out of the house for a while;

(3) Use the future threat of arrest for her benefit;

(4) Take the victim to the hospital.

(b) The victim may not be able to afford having the offender arrested if it results in the loss of his job or temporary loss of support.

(c) The offense may be thought to be conduct which is acceptable to the culture of the disputants and therefore not seriously objectionable to the victim.

(d) The offender, angered by his arrest, may cause more serious harm to the victim upon his return to the family home.

(e) Arrest may cause a temporary or permanent termination of a family relationship or harm innocent family members.

(f) The victim quite frequently changes her mind about arrest or prosecution after she has had time to cool off, and exemplified by the fact that:

(1) Victims seldom secure warrants when advised to do so.

(2) Victims frequently indicate to the judge at trial that they do not wish to prosecute.

(g) There is reticence in the issuance of warrants and prosecutions of such cases by the prosecuting authorities.

(h) The court summarily dismisses disorderly charges stemming from domestic disturbance when the victim-complainant chooses not to prosecute.

(i) The court is lenient in sentencing.

(j) Policemen (as well as judges and prosecutors) may have had similar experiences in their own homes and may feel that "a man's home is his castle". (Parnas, 1971)

On the rare occasions when police did make arrests in response to spouse assaults, Parnas found they were likely to result from one or more of the following conditions: a serious injury, possession or use of a weapon, the demand of a disputant to be allowed to sign a complaint, an offensive attitude by one of the disputants, repeated calls for police service in one tour of duty, and a high probability of a repeated incident or serious harm. Just how officers assess the latter factors, Parnas does not make clear. Of all the factors, serious injury has probably been the most powerful and most widely followed condition leading to arrest. Field and Field (1973) report that many police departments use a "6-stitch rule", not arresting spouse assaulters unless the injury requires a certain minimum number of stitches.

A major quantitive observation study of police responses to domestic disturbances is Black's (1979) analysis of 1966 data pooled from Boston, Washington, and Chicago. Black found the "style" of social control in 108 situations involving married couples to be most often conciliatory (70%), very rarely therapeutic (2%) or preventive (2%), and sometimes coercive or "penal" (26%), even though 60% of the disputes in those cases had been violent. Only 13 of the 108 cases involving married couples (17%) resulted in an arrest of one of the parties.

The usual approach was removal from the premises of at least one party (for married couples), and threat of arrest for estranged couples and girlfriend-boyfriend relations. This difference may be explained by the greater prevalence of violence among married couples than among estranged couples and "friends" as reported by Black. When "asking" and "ordering" to leave are combined, 32 of all 108 disturbances among married couples (29%) are found to have been resolved by getting one of the participants off the premises. Black (1979) identifies several factors associated with the differences in police response, including race and class. Black couples and lower class couples receive more coercive police treatment and less active conciliatory efforts than whites and middle class persons.

The low arrest rates have been confirmed by other quantitive studies, although none of the others was observational in nature. Roy's (1977) survey of women who contact crisis centers found that of the 66% who did seek help from the police, the police do not make an arrest in 90% of the cases. A Washington, D.C. study of 7,500 wives who attempted to bring charges against their husbands found that only 200 were able to do so (Field and Field, 1973).

One of the most important studies on the police handling of domestic violence was conducted by The Police Foundation in Washington, D.C. on data from Detroit, Michigan and Kansas City, Missouri (Wilt and Breedlove, 1977). The Detroit data were concerned with "the participants in and characteristics of conflict-motivated homicides and assaults to determine whether some of these crimes can be prevented". As defined by the researchers, conflict-motivated homicides and aggravated assaults are those that are not associated with the commission of another crime (such as robbery) but generally begin as verbal disputes and almost always involve persons who know each other. Data were collected from police files in Detroit from 1971-73 and from interviews with people connected with 244 conflict-motivated assaults. One finding which emerged from the Detroit data was that almost 60% of all intra-family homicides were preceded by threats. However, the extent of "false alarm" threats which did not result in violence is unknown.

The Kansas City data were scrutinized "to question the long-standing axiom that homicides and assaults are not preventable by police action" (Wilt and Breedlove, 1977, p.5). The project gathered and analyzed several types of data including 1) arrest records of homicide and assault participants for 1970-1971, 2) the number of police responses to disturbance calls at addresses of homicide and assault participants within the previous two years, and 3) the characteristics of homicides, aggravated assaults and participants based on a "Disturbance Profile Card" filled out by officers responding to domestic disturbances.

The key finding of the Kansas City study was that there appeared to be "a distinct relationship between domestic-related homicides and aggravated assaults and prior police interventions for disputes and disturbances". The Kansas City study found that in the two years preceding the domestic assault or homicide, "the police had been at the address of the incident for disturbance calls at least once in about 85% of the cases, and at least 5 times in about 50% of the cases" (p.9). Since the Kansas City, Missouri police at the time these data were collected were taking the traditional police tactic of "shutting down the violence for the evening, period", and were not using longer-term crisis intervention strategies, this study became a major basis for any argument about the preventive role of the police in domestic violence.

If the police were present during the initial, less serious indicators of developing violence, (as this study indicated they were) and if it were possible for them to take appropriate actions to either mediate the conflict or refer the conflicting parties to professional counselling, subsequent violence might be avoided. The assumptions of this model were that 1) the conflict arose from the family or couple interaction pattern, 2) that the conflict would not abate but might escalate if intervention by an outside agency did not occur and, 3) that the police were the outside agency that most came into contact with such conflict. Hence, if the police were better mediators and better at referring couples to effective agencies, domestic conflict might be reduced.

While the intention and major thrust of such a model might be positive, the model overlooks the problem that conflict is one thing, assault another. It might be more useful to have the police play this sort of conflict management role, but only if they do so without jeopardizing the safety of women assaulted in the course of "domestic conflict". Hence, while the objectives of preventive policing might be laudable with respect to conflict management and preventing future violence, they have occasionally been instrumental (along with unclear policy guidelines) in contributing to a police tendency to overlook present violence, involving wife assault. Policy guidelines need to discriminate appropriate police procedures for conflict management from appropriate police procedures for arrest following an assault.

Further support for this position comes from the recent survey of 130 police officers conducted for the Police Executive Research Forum by Loving and Farmer (1980). Field research was conducted on the policies and procedures of 17 police agencies for handling domestics, and survey questionnaires were mailed to 25 other agencies regarding their policies and procedures. Based on the survey material collected, some policies and procedures were proposed and developed. However it must be kept in mind that, as the officers surveyed came from jurisdictions in the U.S. where LEAA domestic violence grants had been awarded, they do not represent an unbiased sample of all police officers.

Loving and Farmer (1980) are critical of the overuse of crisis intervention skills and reconciliation strategies by police in cases where serious injury or repeated abuse has occured. As they point out, the proper long term evaluation of such procedures has not been done so there is no way of ascertaining the effectiveness of such techniques. They also raise the question of whether such techniques might not in fact contribute to the long term likelihood of recurrent violence by suggesting to assailants that their behavior would be overlooked.

The study for The Police Executive Research Forum (Loving and Farmer, 1980) cited the lack of departmental policy for police handling of domestic disputes and attributed police failure to make arrests on wife assault cases to an over-reliance of verbal dispute, despite the estimates of some that assault occurs in 1/3 of all domestic dispute calls (Bard, 1978). Clearly, some issues begin to emerge even with early studies of police handling of domestic disputes. These include the circumstances under which mediation, referral or arrest are used as well as the potential effectiveness of police policy.

The crisis management skills which were developed by psychologists to be used by police in one-arrest situations have been broadly applied to all family conflict calls, even those warranting arrest. Since approximately one-third of family crisis calls involve violence (Dutton, 1977), a large number of calls are being "mishandled" by "underuse" of arrest according to Loving and Farmer. In addition, domestic violence gets lumped in with neighbour disputes, landlord-tenant disputes, etc. which have vastly different prognoses and dynamics. The emphasis on police neutrality in such situations has been criticized as subtly encouraging assailants and unfairly placing equal blame on the battered woman for being involved in the violence. Loving and Farmer point out that these beliefs have led women's groups to file class action suits against police agencies, charging negligence and violation of the victim's civil rights. As a result of one such suit (Bruno vs. Codd, Supreme Court, State of New York, #21946/76), the New York Police Department agreed

> ...to inform a battered wife of her rights to a criminal or civil court proceeding; to protection or aid in getting medical help if she needs it; and to help in locating the assailant if he has left the scene (Loving and Farmer, 1980, p. 37).

In another suit (Scott vs. Hart, U.S. District Court for the Northern District of California, #C76-2395, 1979), the Oakland, California Police Department agreed to treat all domestic violence as alleged criminal conduct and to make arrests in appropriate cases. With these issues in mind, let us turn to the results of the Loving and Farmer survey.

The authors first asked about officers' use of arrest in domestic violence cases and found that 19% of officers indicated they "avoid arrest whenever possible" in domestic disputes, and 30% claimed they would "arrest if a crime has been committed". They did find, however, if the officer decided to make an arrest, four factors contributed the most to this decision. These were commission of a felony, serious injury to the victim, use of a weapon, and use of violence against the police.

On the other hand, when they decided not to arrest, the officers assigned greatest important to the refusal of the victim to press charges. In rating the effectiveness of alternatives to arrest, the officers rated separating the parties and removing one to the home of a friend or relative as most effective, followed by negotiation and mediation and finally protection orders, and peace bonds. The fact that mediation techniques were not rated higher may be due, the authors speculate, both to poor training and the belief that these are social work techniques. The rating given to effectiveness of mediation techniques may, to a certain extent, raise some questions about Loving and Farmer's claim that the police "overuse" these techniques. Referrals apparently were rarely used by the officers in this study, but those officers who did use them made referrals, in descending order of use, to 1) marriage counsellors, 2) family court, and 3) the districtattorney's office. The district attorney's office was used because it put the onus on the woman to initiate a criminal complaint in misdemeanor assault cases. (Similar to advising woman to contact a justice of the peace and lay an information in Canada). Unfortunately, on both sides of the border, women often drop charges because of factors such as bureaucratic frustrations, combined with economic and emotional pressures to return to the relationship. To put before a woman the responsibility for carrying through with charges against her husband when she is in a time of crisis and vulnerability may simply be expecting too much of her and, consequently, may represent too lenient a policy for assailants.

2. Current Practice: Canada

A variety of evaluation studies of police handling of domestic dispute calls have been done in Canada. Again, wife assaults have often been lumped together with other forms of domestic conflict in these studies. One of the key issues explored in many of the Canadian studies is whether police response should be by a special unit or by police officers in general. London, Ontario has developed the most comprehensive generalist/specialist program in Canada (Jaffe and Thompson, 1979). Initiated in 1971 to unite social-science expertise and police expertise, the program includes crisis intervention training for all police (a "generalist" approach) plus a family consultant service which acts as specialists on family dispute calls with police. The result is a generalist/specialist blend. While recognizing that a special "dispute" team may not always be available, the London system uses them where most appropriate and backs them up with trained generalists. Similar systems operate in Regina, Kingston and in Vancouver, where a "Car 86" programme includes a social worker and handles "family trouble" calls exclusively, and also in Surrey, B.C. where family court counsellors provide mental health assistance.

The London family consultants are a part of the London Police Department, and provide service from 9 a.m. to 4 a.m. Monday to Friday and from noon to 4 a.m. on weekends. Generally, uniformed officers, having "cooled down" a family crisis call and having learned the nature of the problem, call the family consultants to attend. Officers generally leave when the consultant has been briefed unless a recurrence of violence seems likely. The consultants take over the mediation/counselling and referral functions of conflict management, as well as legal advocacy.

In the period from January 1, 1976 to December 31, 1978 the London Family Consultants intervened in 4,006 domestic crisis calls, of which 1/3 were family "dispute" calls (the rest were a variety of juvenile-family and mental health problems). In the family dispute calls, fear of violence was the most often named issue although the report does not differentiate by sex of offender or victim. Alcohol was involved in 31.6% of the cases. An assault had occurred in 19% of the calls, 47.5% of the assaults were cases of husbands assaulting wives (only 3.9% were wives assaulting husbands) and 11% were "interspousal reciprocal assault" (Jaffe and Thompson, p.32). Charges were pending or laid on 11.9% of the total calls although the relationship of assaults to charges is not clear. At the time of writing the London Family Consultant service still stands as the exemplary police generalist-specialist model in Canada, if not in North America. The issue of generalist, specialist and mixed models for police dispute intervention will be considered in more detail below.

In Vancouver, British Columbia, the orientation has been more toward a generalist model, since in a city the size of Vancouver (440,000) over four domestic disturbance calls per hour come in during peak periods. Given that specialists tend to spend an hour or more working with one family, the costs of having sufficient specialists to answer all calls can be prohibitive. In 1975, Levens and Dutton did a long term study of the police and social agency response to domestic dispute calls in Vancouver (Levens and Dutton, 1977). The effects of crisis intervention training for Vancouver police and of change in police policy regarding domestic disputes on actual police practice were examined.

The initial data on the Vancouver Police Department response prior to the proposed changes included an analysis of the police records and tape recordings of telephone requests for service. Some of the key findings were:

1) Police injuries while handling domestics were minimal. (One minor injury to 1 of 29 officers claiming Workmen's Compensation).

2) 34.5% of all citizen requests for service were for domestic disputes (7,396 from January to June 1975).

3) The average time spent per call for service by all police was least on domestic calls (31.8 minutes compared to 45.1 minutes for all service calls).

4) Police responded to 47.9% of domestic calls, usually on a priority II basis.

These data may indicate a police reluctance to intervene on domestic calls although as the likelihood of response was unrelated to officer/vehicle availability, a high police injury rate (as reported elsewhere) was not found in this study.

Post measures of the Vancouver Police Department response were taken from March to May of 1976, and July to August 1976. Data during this part of the research included domestic dispute research reports filled out by police (total number 167, a return rate of 16.5%) and, again, tapes of incoming requests for service. This time 117 such calls were selected to trace the eventual outcome of each. Initially, it was hoped to collect longitudinal data, tracing calls through police response, referral, social agency, long term effects, etc. However, due to lack of cooperation from social agencies and the impossibility of tracing disputants from police reports, these long term goals had to be abandoned. However, the major findings of the follow-up study (Levens and Dutton, 1977) were:

1) Insufficient information was being collected by police operators and relayed to police officers.

2) No change in allocation of types of calls to priority ratings was found. Hence, despite stated change in police policy toward greater involvement on domestic disputes, no changes occurred in the intake system.

3) The use of alcohol was reported in over 2/3 of the domestics attended, however, it is not known to what extent the use of alcohol by one or more parties predisposed officers to fill out a domestic dispute research report although it did contribute to the likelihood of arrest, and arrest probably increased the likelihood of a research report being filled out.

4) There were no cases of injury to police while handling domestics during the follow-up period.

5) Husband-wife disputes constituted 76.5% of the reports written, in 42% of reports, an injury had occurred prior to the police arriving. However, arrests were made in only 14.4% of the calls.

6) By far the most common method of resolving the call was to make a referral (63% of all calls). Of these, 75% were referred to social service agencies, and 25% to

criminal justice agencies (family court, legal counsel, justice of the peace). Police who had crisis intervention training (safety procedures, defusing techniques, interview skills, mediation, referral, minority group and legal issues) were more likely to make referrals, and more likely to make their referrals outside the criminal justice system. No differences in arrest rate were found for police who had such training compared to untrained officers.

Although many interesting results came out of this study, one of the central findings (although least optimistic) was that despite policy statements and training to the contrary, little change occurred in the Vancouver Police Department's response to domestic violence in terms of the likelihood of police answering dispute calls. Was this a failure of the training to have its intended effect or a failure of the policy of greater involvement in family crisis calls to be communicated through the ranks and buttressed with the necessary changes in departmental philosophy and criteria for promotion?

To address this question, referral is made to an evaluation done of the crisis intervention training which the Vancouver Police Department received (Dutton and Levens, 1977). This evaluation administered questionnaires to 20 experienced (but untrained with regard to crisis intervention) police officers who served as a control group and to three groups of 15, 15 and 20 trained recruits who were 7 months, 3 months and two weeks respectively out of recruit training. Some of the key results were:

1) There was no difference in reported arrest rates between trained and untrained groups (p.81).

2) Trained officers were likely to make referrals to social agencies, untrained officers were more likely to advise the woman to contact a justice of the peace (which at that time was a legal deadend since justices of the peace were very reluctant to take information in domestic violence situations).

3) Trained officers were most satisfied with their preparation for handling domestic dispute calls, reported greater feelings of accomplishment handling such calls, and reported decreases in violence directed towards them (as compared to their pre-training experience) (p.91).

4) None of these findings disappeared during the time frame samples: recruits 7 months after training did not differ from trained recruits who had just completed training (p.91).

Hence, it appeared that the training accomplished its goals. The failure to pick up differences in the before and after measures of police handling of domestic disputes appears to be more related to policy issues (Dutton and Levens, 1979), and to problems with co-ordination with other agencies inside and outside the criminal justice system. In other words, the police cannot change in isolation. Agents in related parts of the criminal justice system and social service/mental health systems must provide adequate backup for the police. If police make referrals to social agencies that are ill-equipped to deal with problems of family violence, recidivism rates will not decrease and officers will lose confidence in those agencies and stop making referrals. Similarly, if justices of the peace and Crown prosecutors are reluctant to proceed on wife assaults, police will stop arresting. Hence, one way to begin to make changes in the legal response to domestic assault is to being at the "far end" of the system. This is, by instituting an effective treatment program for wife assaulters which judges may use as a condition of probation, more Crown prosecutors and judges may begin to use this option and more convictions may occur.

B. The Issue of Arrest vs. Referral and Negotiation

1. The Unlikelihood of Arrest

There are a number of arguments both for and against stepping up arrests for domestic assaults (either common assault or assault causing bodily harm. Before reviewing all these arguments, it might be useful to examine briefly the Loving and Farmer (1980) study cited above which bears directly on police officers' attitudes and perceptions regarding the use of arrest. Loving and Farmer had a variety of arrest statutes to study since U.S. state laws fluctuate from police making arrests for misdemeanor assaults only when they occurred in their presence to police being mandated to arrest for misdemeanor assault on the basis of probable cause. Loving and Farmer (1980) found some resistance amongst officers to mandated arrests. Officers resented them as:

> intrusions on their professional judgment and flexibility, while others regard them as a narrow minded approach that will have minimum effect on the overall problem. Many officers would like to retain their discretion to refer certain couples to diversionary programs outside the criminal justice system, such as a domestic violence counselling program or a dispute settlement center, or to civil court for a restraining order. Painfully aware of the over-crowding and delays in the criminal justice system, they believe that a singular reliance on arrest in response to these calls is neither realistic nor effective (p.5).

Loving and Farmer also cited the concern many officers had about increased threat of civil liability as a result of new arrest requirements.

> Facing greater public scrutiny of their performance officers are particularly susceptible to charges of false arrest, false imprisonment and improper or excessive use of force. Noting these risks, many state legislatures are limiting officers' civil and criminal liability in their new domestic violence statutes (p.5).

Despite these concerns, the authors view the increased emphasis on arrest as a positive development in cases of serious injury, use of weapons, or violation of restraining orders. Such emphasis "underscores the seriousness and danger involved in these calls, ... provides officers with a legal mandate to prevent futher deterioration of violent conflicts. Moreover, it assures the victims that help is available and that their rights to police protection will be safeguarded" (p.46).

Loving and Farmer propose a more detailed analysis of police procedures for handling domestics which incorporates exact arrest procedures where warranted and mediation and referral techniques where warranted. Loving and Farmer argue that one cause of low police arrest rates in domestic assaults is the overuse of novel "mediation techniques" which are meant to be used in nonviolent conflict management situations. However, according to Loving and Farmer's own data, police do not place a high confidence in such techniques (p.49) and thus are not likely to overuse a technique in which they have little confidence. Furthermore, arrest rates between police trained in crisis intervention and untrained police did not differ in the Dutton and Levens (1977) study although referral and mediation were used more by the trained officers. If mediation was the cause of low arrest rates, one would expect the police with crisis intervention training to arrest less.

This is not to argue that police arrest rates in domestic disturbance are not extremely low. Although not specifically restricted to interspousal violence, Levens and Dutton (1977) found the rate for Vancouver, B.C. police to be 9%; a study in Oakland, California estimated the rate to be 5%; a Colorado study (Meyer and Lorimer) found 6% as did a Los Angeles study (Emerson, 1979). These rates persist despite the high frequency of violence. Bard and Zacker (1974) found violence occurring in over one-third of the 1,000 family disputes they studied in New York

City; Black (1979) found violence in 60% of the married couple disputes he studies. A study in Kansas City (Meyer and Lorimer) found that in 11% of police domestic dispute interventions, violence occurred in front of the police and evidence of violence having occurred before police arrived existed for a much higher proportion of domestic disputes studied.

Of course, every "domestic disturbance" call does not warrant an arrest. The call could range from something as minor as a noise complaint to homicide. Studies which collect data from the police communications centre, as did the Dutton and Levens study, cannot make an assessment of whether an assault occurred on a "domestic disturbance" call or not. However, if one took the most conservative estimate of the incidence of violence on domestic disturbance calls (33% by Bard and Zacker) and compared this to the average reported arrest rate (around 9% based on studies by several authors), one could argue that there are cases where assaults are occurring and arrests are not being made. If the assault does not occur in front of the officer, the likelihood of arrest is low (Field and Field, 1973).

The underuse of arrest predates the use of mediation techniques and in that sense scapegoating the use of such techniques seems unwarranted. Rather, such underuse is due to a complex interaction of factors: a lack of specific and clear departmental policy, inadequate training time in domestic dispute intervention, lack of support from the rest of the criminal justice system and an entire constellation of values, beliefs and attitudes held by police concerning the acceptability of domestic violence. In addition, as MacLeod points out,

> Not only do the police know that many families will suffer loss of financial support if the husband is imprisoned and that many men retaliate against their wives when they are released, they also know that if the husband is arrested he will probably be promptly released from custody under the provisions of the Canadian Criminal Code and also that the sentence handed down against him will likely be very lenient (MacLeod, 1980, p.73).

There is little dispute that women do frequently drop charges. A Los Angeles (Emerson 1979) study found that for every misdemeanor wife assault charge prosecuted, women dropped seven others. However, as discussed later, some promising developments in Los Angeles and Santa Barbara appear capable of reversing this tendency. Whether the charges are being dropped or not, the police belief that they will be dropped operates to decrease arrest rates. However, not all writers would agree that an increase in arrests is desirable. Bard, for example, cautions against the belief that stepping up arrests will serve as a panacea for domestic violence.

> Policies and practices that encourage officers to seek alternatives to arrest are consistent both with progressive legal thought and with the practical realities of invoking the criminal process. The courts are over-crowded, understaffed and unable to process the increasing numbers of offenders brought to them each year. Thus when a family dispute is referred to court, it may be days or weeks before any action is taken - ample time for fights either to escalate or to be forgotton (Bard, p.307).

Bard points out that, if the couple has chosen to separate, the deterioration in the relationship brought on by a pending court action may not matter, but if they have chosen to stay together "the consequences of having invoked the criminal process ultimately may be destructive" (p.307). Men arrested in family disputes are released almost immediately after posting a small bond and agreeing to come to court to respond to the charges. Hence, a man with violence potential and a new grievance is being released. This part of Bard's argument seems tantamount to saying that the criminal justice system should not be used because it cannot be made to work, an argument perhaps best left to pessimists or anarchists. There are some harsh economic and emotional realities which often lead battered women to drop charges and which further the cycle of police apathy and lack of protection for the women. It seems more useful to attempt to find a way to make the criminal justice system work to provide protection for citizens and to find positive outcomes of diversion rather than diverting people by default.

A related issue on the topic of police arrest practices is whether police should have the discretion to decide on arrest (or some alternative intervention procedure) or whether arrest should be mandatory. Bard sees the limiting of police discretion as a retrograde step. He feels that the class action suit against the New York Police Department has mandated police to make arrests and improperly prohibits them from even suggesting benefits to be derived from a social service agency. The N.Y.P.D. regulations resulting from the suit, claims Bard, define wife battering (where there is clear evidence for assault) and family offense (where there is no such evidence) as being synonymous, since by his calculation there is no assaultiveness of any kind in 56-71% of all family dispute calls coming to police (Bard, 1978).

Again, the issue seems to stem in part from a confusion between domestic disturbance and wife assault. People who are mainly concerned with the problem of wife assault (transition house workers, spokespersons for the womens' movement, etc.) tend to focus on statistics which indicate that wife assaults are not being properly responded to by the police. Police, in their own defense, focus on the overwhelming load of "domestic dispute" service calls that they receive. There is general agreement, however, that few wife assaults get reported, and, when they are reported, the consequences for the assaulter are rarely severe.

To help resolve this apparent problem the following recommendations might be considered:

1) Communications operators answering police emergency lines be provided with police guidelines regarding

domestic disturbance calls. A brief set of questions having high predictive validity regarding violence (has a threat been made?, is party intoxicated?, is there a past history of violence?) be made available to all communications personnel.

2) Police officers attending domestic dispute calls be specifically trained to inquire about any assaults which may have occurred, officers utilize conflict management procedures with a view toward preventing future violence; if an assault has occurred, the victims be informed of their legal right to proceed with charges, the officers attending file a report of the assault, photograph the victim's injuries, and prepare exhibits to aid the prosecution.

Loving and Farmer (1980) feel that "it would be unrealistic and unproductive to suggest that arrest should be used in every spouse abuse or wife beating case, particularly for those misdemeanor cases which are clearly victim-precipitated or involve victims who adamantly refuse to press charges". Furthermore, they present various sets of standards for making arrests in spouse abuse cases. One set of standards is that which has been developed for the Chicago Police Department (Loving and Farmer, p.63). These guidelines state that consideration should be given to the following factors:

1) Seriousness and intensity of the conflict.

2) Use of a weapon or indication of intent to use a dangerous object.

3) The extent of any previous injury or damage.

4) The offending party having previously appeared in criminal court.

5) Indication of a previous attempt to sever the relationship.

6) Indication that a previous call had been made to the police.

7) Involvement of children or mentally deficient or intoxicated parties.

The second set of arrest standards mentioned by Loving and Farmer (1980, p.64) mandate arrest in certain cases. These standards were issued by the district attorney in Westchester County, New York in 1978. Arrest is required in the following instances:

1) Wherever a gun, a deadly weapon, or a dangerous instrument has been used.

2) Wherever there is reasonable cause to believe that a felony has been committed.

3) Where there has been a maiming or other serious physical injury.

4) Wherever there is a history of criminal activity between the parties and where the defendant's record indicates violent criminal history.

5) Where, in the judgment of the police officer, the sanction of an arrest appears necessary for the future protection of the victim.

In many jurisdictions in the United States, there are alternative law enforcement actions which police officers can take in cases where they decide not to make arrests. The alternative actions described by Loving and Farmer (1980, p.65) include issuing a misdemeanor citation, taking the offending party into protective custody, issuing a domestic violence summons, and filing a domestic violence temporary restraining order.

2. The Law and Arrest

The reluctance of the police to make arrests in cases of domestic violence may, in part, stem from the structure of the law itself. Under the Canadian Criminal Code, a police officer cannot arrest a suspect without warrant for either common assault or assault causing bodily harm* if the officer has reasonable and probably grounds to believe the public interest may be served without arresting. The public interest is not so served if failure to arrest weakens the state's ability to establish the man's identity, secure or preserve evidence relating to the offense, or prevent the continuation or repetition of the offense or another offense (Goldman, 1978). Of course, it is legally possibly for a woman to bypass the police by laying a private information, however, few women are aware of this right or the procedures involved. In addition, there is a general lack of support for women to do this and it is at this stage that a legally oriented victim-advocate service to act on the behalf of battered women might be useful.

3. The Effects of Arrest

So far we have considered the argument that arrests in wife assault cases are not made as often as the legal grounds would indicate and we have examined some of the arguments against increased arrest rates. Before any policy decision can be implemented with confidence, however, it is necessary to consider what the results of arrest might be.

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* Recent amendments to the Criminal Code (Bill C-127) will replace the current common assault and assault causing bodily harm offences with the following: assault (Section 245 of the Revised Statutes of Canada) will be an indictable offence or an offence punishable on summary convictions; assault with a weapon or causing bodily harm (Section 245.1) will be an indictable offence punishable by up to ten years in prison; aggravated assault (Section 245.2) will be an indictable offence punishable by up to fourteen years in prison.

Four main possible effects of arrest on wife assault are deterrence or punishment, reformation, incapacitation and secondary deviance. The deterrence or punishment is a major concern here because it represents the main thrust of demands for increased arrest. One could argue that men will continue to be assaultive so long as they feel they will not be punished by the criminal justice system. The "failure" of the criminal justic system to act, to arrest and to make the clear statement that wife assault is mala in se (evil in itself) provides a tacit condoning of wife assault (Goldman, 1978).

Presumably, the arrested wife assaulter would find that the unpleasantness of arrest outweighs any gain he might receive from assaulting his wife. This unpleasantness would stem, in the main, from being ordered from the home, taken into custody, booked and fingerprinted. In addition, on the assumption that charges are proceeded with, ensuing court appearances and the possibility of incarceration would also contibute to this unpleasantness.

Fattah (1976) distinquishes between a general and a special (or specific) deterrence effect. The general effect serves as an example to others of what they can expect if they perform a proscribed behaviour. A speical or specific effect (also called intimidation) refers to the effects on the individual who has actually experienced the punishment.

Zimring and Hawkins (1973) further distinquish between absolute and marginal deterrence. Absolute deterrence refers to whether a specific criminal sanction, such as arrest, deters. Marginal deterrence refers to whether a more severe criminal sanction such as arrest, plus more severe sentences and an aggressive prosecution policy would deter.

Both distinctions are relevent to the question of whether arrest deters wife assault, but no clear empirical evidence exists to provide direction. As Fattah (2976) states, "it has not yet been empirically demonstrated that the threat of punishment acts as an effective deterrent upon potential law violators (general deterrence) or that actual punishment does in fact prevent recidivism (special deterrence)" (p.21).

Other theoretical effects of increased arrest rates include:

(a) Reformation - a "moral jolt" that causes the wife assaulter to recognize his behavior as wrong (Andanaes, 1968).

(b) Incapacitation - demands for mandatory arrest may be directed toward incapacitation more than specific deterrence; the goal would be to remove the offender in order to protect the victim (perhaps by incarceration). Langley and Levy (1977) report the high frequency of cases where husbands speak calmly to police officers and then resume their brutal behaviour toward their wives when the police leave. Arrest would diminish this short term danger.

The difficulty with deterrence, reformation and incapacitation is that the long term likelihood of each, following arrest is unknown. However, despite the unknown quality of these measures, their utility as criminal justice system responses must be kept in mind.

(c) Secondary deviance - in direct contradiction to the above, secondary deviance predicts that punishment "labels" a person as criminal in such a way that the person internalizes the role expectations attached to the label and behaves in accordance with those expectations. This "self-fulfilling prophecy" effect would lead to the prediction that arrest might serve to increase subsequent violence.

Some difficulty in considering these concepts in the abstract stems from the lack of a precise specification of what "arrest" means. We have considered above that arrest can lead to a variety of outcomes, from incarceration to unconditional discharge to therapy. Any consideration of the effects of arrest on subsequent behaviour would have to look closely at these various outcomes of arrest (see Research Appendix).

C. The Issue of Generalist vs. Specialists

One of the policy issues surrounding police handling of domestic disturbance is the issue of "generalists" (training all police in basic intervention skills) vs. "specialists" (having specially trained police [such as in New York with Morton Bard's system] or a police - social worker team [as in London, Ontario]). Descriptions of the advantages and disadvantages of each are available elsewhere (for example, Jaffe and Thompson, 1979, and Dutton and Levens, 1979), so a brief overview will suffice here.

The primary disadvantage of the specialist model is its expense both for small municipalities and large cities and the inability of officers to attend the majority of calls. Generalist systems are probably better suited for smaller communities where professional help or more extensive specialist training is beyond the operating budget. Nevertheless, specialists may, because of intensive training, be better at the mediation and referral aspects of intervention. Whether or not this in itself constitutes an advantage is debatable.

A specialist squad could, however, have the advantage of providing a police-based victim advocate service as they could provide more attention and information to assaulted wives, could attend calls where order has been restored by uniformed officers and follow up other calls within days. While not necessarily lowering the arrest rate (since they would rarely be the initial intervention agent unless the "specialists" are police officers) they could, nevertheless, provide improved contact with social agencies, transition houses, and so forth.

The model used in London, Ontario, combines both the generalist and specialist models. All police officers receive additional training concerning family crises, but there are also specially trained civilians attached to the police department. A police officer responding to a domestic crisis situation can call for one of the specialists to come to the scene. We agree with Jaffe and Thompson (1979) that this combined model, where affordable, provides an effective means of coping with domestic disturbances and wife assault.

D. Police Social Agency Liason

In additional to the points mentioned above, a family disturbance team could facilitate police-social agency relations. Such relations are occasionally problematic since police and social workers tend to have different philosophies and solutions for social problems. In addition, police often do not receive sufficient feedback from social or criminal justice system agencies about referrals made. Yet such information sharing is essential, both in terms of outcomes of cases and also in terms of identifying families at risk. To deal better with the latter issue, a multi-agency panel might be developed which would include representatives from transition houses and hospital emergency wards, the police, the family disturbance team, etc. This multi-agency panel could supply sufficient information to pick up families at risk where there is insufficient information from any one agency. Although a family distrubance team member would be best suited to sit on such a multi-agency panel (about which more will be said below), police representation could be made in areas where no family disturbance team exists.

E. Police Information Systems

Effective police (and for that matter, any agency) representation on a multi-agency team depends on effective recording of domestic violence information by the police, so that high risk families are known. At present, many police departments fail to file reports on wife assault cases, or reports are listed by the surname of the caller (who may live next door), so that cumulative information is lost. Effective intervention strategies by police must begin with better information recording procedures, both for police use and for more efficient contributions to any multi-agency approach which would identify "at risk" families.

F. Summary Recommendations

1) Domestic disturbance training should be provided for all police officers.

2) Special training in establishing risk and obtaining essential information should be available to all police communications operators.

3) Where feasible, special family disturbance teams of police and social workers or psychologists should be established to improve mediation and referral services to social agencies.

4) The assault guidelines already outlined should remain in effect regardless of whether a generalist, specialist or combined generalist/specialist model is used.

5) Regardless of whether an arrest is made, police should provide small, wallet-sized cards to women in domestic disturbance calls where violence is either current or a future possibility. These cards should provide phone numbers for shelters, transition houses, legal assistance, and medical assistance. They should be given to the woman at a time when the husband is not present. In addition to other benefits, these cards may help break the victim's dependence on police services by giving attention to other courses of action to help wife assault victims to cope with their situation.

6) Where special victim services exists (as will be discussed below), these services should be appraised of all domestic disturbances calls where cards are given out. This could be done by affixing a detachable stub to the information cards. Police could fill in names, address and phone number of the disputants along with an indication of the woman's willingness to be contacted. The stubs could be detached and sent to the victim service.

7) Police departments should adopt a policy of cross-referencing domestic disturbance calls by names of disputants and address of dispute. It is important that police answering domestic disturbance calls be able to retrieve prior dispute information before attending the call in order to assess the violence potential of the situation.

CHAPTER III

Access to Courts

A variety of legal, procedural and policy issues surround the access afforded an assaulted woman. The legal issues have been comprehensively reviewed elsewhere (Goldman, 1978); the procedures are set out in some useful handbooks designed to aid assaulted women (Backhouse, n.d.; Ostrowski, 1979; Fields and Lehman, n.d.), and the issues involved are reviewed by MacLeod (1980). In addition, an informative albeit informal study (Hogarth, 1979) of court procedure, policy and the attitudes of legal actors has been conducted. All of these will be reviewed below.

A. Legal Issues

As legal process handbooks point out, (for example, Ostrowski, 1979), assaulted women have a variety of options for seeking legal redress including protection orders, injunctions, and peace bonds, torts, criminal assault charges, and divorce.

1. Protection Orders

Protection orders are designed to provide legal sanction ensuring that husbands will not harass or interfere with their wives. Under provincial law (i.e., The Family Relations Act of B.C.* or the Family Law Reform Act of Ontario) a woman can apply for an injunction (or non-entry order), a court order prohibiting a husband "from entering the matrimonial home and/or restraining him from molesting or interfering with his wife" (Goldman, 1978, p.115). If the situation is regarded as an emergency, an ex parte interim order a (temporary order which applies until a husband can be taken to court on criminal charges or legal separation, etc.) may be granted to a judge either in or out of court. This order is "the only legal recourse the woman has which takes force immediately and does not require first finding and serving the husband" (MacLeod, 1980).

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* At the time of writing (1981) this act is under appeal to the Supreme Court of Canada for being unconstitutional and inconsistent with federal legislation.

An ex parte interim order can be supplanted by a Peace Bond (under section 745 of the Criminal Code) whereby a husband comes before the court and the judge, being satisfied that reasonable grounds for a wife's fear exist, orders the defendant to enter into a recognizance (or obligation before the court) to keep the peace and be of good behaviour for a period of up to 12 months. A bond (or deposit of money) is required subject to forfeit if the bond is broken, and conditions such as a "no contact" order can be atached.

A variety of problems are reported to exist with protection orders, etc. Peace bonds, for example, take time to obtain, do not remove a husband from the house unless a couple is already separated, and in practice, have not been enforced (MacLeod, 1980), although technically husbands disobeying peace bonds are in contempt of court and are liable to fines and jail terms.

Injunctions are only granted in support of the following legal rights:

1) a woman wants to divorce her husband on the grounds of cruelty,

2) the husband has deserted as well as abused the wife (if he is sole or joint tenant of the home), or

3) the husband has no legal title to the property and hence can be legally barred from the property.

Injunctions can be used as a deterrent when they include the power of arrest for the breach of their terms, but they are of little value to women who do not intend to pursue divorce. If, for example, the woman wants temporary protection while she sorts out her options, injunctions are not useful, since they are required immediately following the assault when the wictim is likely too distraught to make a long term decision about separation or divorce (Hogarth, 1979). In addition, although England and some U.S. states (including Pennsylvania and California) provide warrantless arrest for contravention of the terms of an injunction, Canada requires a determination that the injunction has been violated which causes further delays. Judges rarely use the full powers of the law to back up injunctions, rather they tend to let husbands off with conditional discharges that they not violate the injunction again. The warrantless arrest mentioned above occurs in England and in twenty-two of the United States and is based on probable cause - that is, it does not have to occur in the presence of a police officer.

The advantages of ex parte orders are that 1) they take force immediately and 2) they do not require first finding the husband and giving him notice. They are temporary and apply only until the spouse can be taken to court and charged or have other legal actions taken. Again, the usefulness of such measures depends on the criminal justice system advertising its availability to battered women (which has not always occurred in the past) and on "putting teeth in the law" by enforcing violations. As Ostrowski states, ex parte orders are only issued in emergency situations and are issued infrequently as it runs against our basic system of justice to make an order without notice to and/or hearing from both parties" (1979, p.16). In the U.S., ex parte orders now are available to girlfriends, mothers, and children as well as spouses in many states, and abusers can be evicted from the home regardless of who owns it. In addition, they must continue to pay the rent or mortgage. Eviction orders can also be obtained in a few hours on a 24-hour basis with only the victim present at the hearing. These are emergency provisions which can be made permanent unless the accused requests a hearing or a hearing is automatically scheduled. In the U.S. an argument over the constitutionality of such orders continues (Lehrmann, 1980).

2. Torts

Although the police frequently advise battered women that assaults by their husbands are a "civil matter", in point of fact, women in some Canadian provinces cannot sue their husbands for assaults committed during the marriage or for injuries received from these assaults (Goldman, 1978; MacLeod, 1980). In other words, husbands have tortial immunity from their wives, stemming from the common law doctrine of the "unity of spouses" (Goldman, 1978), even though some have argued that this unity clearly does not exist in assaultive marriages.

Tortial immunity as described does not exist in Quebec, and was abolished in Ontario in 1975 (Goldman, 1978), so that in Ontario "a woman whose marriage is terminated by divorce or annulment may sue her former husband for damages sustained as a result of his tort committed during the marriage. In Manitoba and New Brunswick such actions are possible only with regard to torts committed while the spouses were living separate and apart under a decree or order of judicial separation" (p.125). In other provinces there are no exceptions to tortial immunity.

Goldman (1978) describes the use of the law of tort by crime victims as an empty legal right, citing an Osgoode Hall Law study which showed that only 1.8% of criminally injured respondents collected anything as a result of tort suits against assailants. Thus, removing inter-spousal tort immunity is not likely to help assaulted wives in any material way, but Goldman favours it nevertheless, to remove "a relic of the doctrine of unity" (p.126) and to remove "one of the last remaining laws that indirectly legitimize violence in the home" (p.127).

3. Divorce

As Goldman points out, the Divorce Act is "replete with attempts to promote the reconciliation of spouses" (1978, p.102), even though by the time divorce proceedings have begun reconciliation is generally impossible. Reconciliation attempts may also delay divorce proceedings, again creating a dangerous situation for the battered woman since during this time the husband may feel extreme anger at being divorced so that many women literally have to go into hiding for their own protection. In effect, the time delays involved in divorce proceedings make divorce ineffective as a protective legal measure for an assaulted wife. Also, since many assaulted wives do not want to resort to divorce but want their husbands to stop being violent, divorce represents an unduly severe legal step in many cases.

For divorce on the grounds of cruelty to be granted, it must be established that "grave and weighty conduct rendering continued cohabitation intolerable" must be proven. Single assaults are generally insufficient to constitute cruelty and "even where cruelty is found to exist the court might not grant the decree" if the woman is still cohabitating with the husband, although this cohabitation may be due to economic reasons (Goldman, 1978, p.104). In general Goldman's main critique of the Divorce Act is its emphasis on the preservation of the institution of marriage. Perhaps rather than attempt to lessen the legal basis for the preservation of this social institution, reform might concentrate on making marriage licences more difficult to obtain. Barring this type of reform, it could be argued that the state has a moral obligation to intervene early when violence threatens a marriage and that if the state fails to do so, it should not place barriers in the way of a woman who wants to leave a marriage.

4. Assault Charges

The courts have been criticized for (a) their reluctance to view violence between spouses as a crime comparable to assault between strangers and their acceptance of the premise that traditional criminal law is irrelevant to an intimate relationship that the victim herself may terminate, and (b) their summary granting of bail and lenient sentencing (Goldman, 1978). The criminal court's first concern is that the guilt of the alleged offender be established beyond a reasonable doubt. This may mean, in effect, that victims who choose to stay in relationships may have to live with their assailants through the pre-trial period. In addition, the evidentiary issues of criminal court are such that in issues of domestic assault, successful prosecution is unlikely.

a) Compellability of Spouses

Goldman (1978) points out that while the competence (whether the witness is capable of understanding the nature of the questions put to him/her) of one spouse to testify against another is clear under the Canada Evidence Act, compellability (whether the witness can be forced to testify) is not clear. The jurisprudence on compellability is also unclear in Canada.* In England, however, it was decided that, once a wife is deemed to be a competent witness for the prosecution for her husband's assault charge, then it follows that she is compellable. Clearly, any notion of domestic assault being a crime against the state, with the state taking responsibility for the initiation of charges, is seriously weakened if (1) wives are not compellable witnesses against their husbands and (2) have no alternatives to living with the person who is being charged.

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* In 1970, in R. vs. Carter, it was held that a wife was compellable only in those cases specifically enumerated in section 4(2) of the Canada Evidence Act. Assault is not mentioned in 4(2) hence battered wives cannot be forced to testify. However, in R. vs. Lonsdale (1975), a wife was held to be a compellable witness against her husband on an attempted murder charge which is also not listed in 4(2). This latter decision provides some legal basis for compellability in domestic assaults. R. vs. Beam (1975) also held that wives were compellable witnesses (Goldman, 1978).

The Law Reform Commission of Canada has proposed a Federal Evidence Code amendment where judges are granted the discretion to compel testimony from wives when they believe the wife's refusal to testify is based on factors other than the reconciliation of the spouses (Goldman, 1978).

At present the issue of compellability presents a problem if the state wishes to proceed with charges. However, even if wives were compellable witnesses but did not wish to cooperate with the prosecutor, the state would have difficulty in proceeding. Hence, any programme designed to increase legal constraints against wife assault must deal with the extralegal issue of how to maximize the cooperation of the assaulted wife who initially wishes to proceed with charges but, prior to the court date, decides not to cooperate with the Crown prosecutor. In a later section, we will examine how some innovative programmes in California have dealt with these problems.

b) Res Gestae

A further evidentiary problem exists with the doctrine of res gestae which establishes rules for the admissibility of evidence in court. Since most cases of wife beating occur in the privacy of the home with no witnesses present, resort must be made to an inclusionary rule of evidence establishing the truth of the complainant's testimony or confirming its consistency (Goldman, 1978, p.80). Thus when a battered wife discloses the origins of her injuries to a third party (police officer, neighbor, etc.) that party's testimony is of great value to the prosecution.

However, before such testimony is admissable in criminal court it must satisfy the "doctrine of res gestae" (that is, the statements must be made in circumstances of spontaneity or involvement in the event so as to eliminate the possibility of fabrication by the declarant) (Goldman, p. 81). Until 1971, this requirement of continuity between the attack and disclosure to a third party meant that an interruption brought about by the seeking of shelter (after the danger had ceased) followed by disclosure to a third party precluded the use of that party's testimony as evidence.

In 1971 (Ratten vs. The Queen) the emphasis was put on "spontaneous exclamations" made in "conditions approximately contemporaneous with the principal event" (Goldman, p.82). Hence a battered woman could identify her husband as her assailant and show her state of mind at the time of the declaration, in order to have the declaration admitted as part of the res gestae. Nevertheless, any prolonged delay in declaring to a third party can severely weaken the case for the prosecution.

Similarly, legal debate still ensues over "similar fact evidence" (that is, whether previous assaults by a husband against a wife are admissible or not). The law holds that the accused may not be convicted on the basis of prior conduct which merely tends to deepen the suspicion of his guilt in the offense charged. Yet, as Goldman points out, treating an assault as an isolated incident lessens the probability of its leading to imprisonment or even a fine when in fact it may be one of an ongoing series of assaults against a woman. The legal debate surrounding the admissibility of prior conduct continues, yet as Goldman states "where a man can be shown to have threatened, beaten and terrorized his wife on numerous other occasions, the probability that he had intentionally inflicted her present injuries in an act constituting criminal assault is overwhelming and the prejudice to the accused is far outweighed by the tendency of the evidence to establish all elements of the crime charged" (1978, p.94).

The probability of a conviction in wife assault cases is diminished where (1) courts do not apply the case of Ratten vs. The Queen (Goldman, 1978, p.81) since the necessity of seeking shelter precludes the requirement of a continuous transaction to satisfy res gestae, and (2) evidence of recent complaints of assaults are not allowed so that a woman cannot "prove the consistency of her allegation against her husband's" (pp.86-87). Goldman argues for a relaxation of evidentiary rules to deal with the special problem of wife assault, and clearly her point is well taken. It should be added, however, that whatever evidentiary rule changes occur they must be communicated to the police to increase their ability to collect evidence for the prosecution.

B. The Prosecution of Wife Assault in Canada

In Canada, other levels of the criminal justice system are involved after police intervention and before an assault case comes to court. These include, in some provinces, justices of the peace who take an initial information regarding an assault and Crown prosecutors who proceed with the case for the Crown. No systematic research exists on the role of either vis-à-vis domestic assault cases in Canada. An informal study was conducted by students in the Faculty of Law at the University of British Columbia in 1978-79 under the supervision of John Hogarth. This study involved first capturing "the experience of battered women as they are processed through the family and criminal justice systems", identifying complaints and problem areas and communicating these, in turn, to professionals in the criminal justice system and finally, noting their responses and explanations (Hogarth, 1979).

1. Justices of the Peace

The U.B.C. study found "a general reluctance" on the part of justices of the peace to treat battering husbands as criminals. For example, in Vancouver, justices of the peace would not even consider taking information from a woman unless they were presented with a police report. But police only write reports on 17% of the domestic disturbance calls they attend (Levens, 1978) and they only attend (at least in Vancouver) 47.9% of all disturbance calls (Levens and Dutton, 1977). Many of the calls which are not attended or where reports are not written may be trivial in nature. However, if we take seriously Bard and Zacker's (1974) estimate that common assault occurs in about 33% of all domestic disturbance calls, it still means that many domestic assaults (many of which are wife assaults) are not being reported by police and this effectively means that a justice of the peace will not act. Of course, in some cases the woman may not want the call reported, although it is arguable that the police would make a report anyway, since the state's responsibility for detection and prevention of future violence cannot be otherwise discharged. Also, police reports are often delayed in arriving at the justice of the peace's office which means that a woman may arrive first and be told to wait, or sent home "to think things over". In additon, justices of the peace may often try to dissuade a woman from laying charges even when there is a *prima facie* case of assault (Hogarth, 1979). Women are often cross-examined by justices of the peace at this time, even though they may be confused and upset (MacLeod, 1980; Hogarth, 1979). Despite this, any contradiction lessens a woman's chance of successfully laying a charge. One justice of the peace who was interviewed admitted that, in this entire career, he had never asked for witnesses to come before him, even when these were readily available, yet if he was not convinced by the wife's allegations, he would not take the information.

Justices of the peace interviewed in the UBC Faculty of Law study blamed the high percentage of subsequently dropped charges (which they estimated at 75%) for their reluctance to lay charges. These dropped charges were "a waste of the justice of peace and the magistrate's time and gave everyone unnecessary work in an already cluttered up criminal justice system" (Hogarth, p.19). Evidence was also found of justices of the peace giving women incorrect information (for example, that a charge is irrevocable, that a police report is essential in order to lay a charge) and essentially barring any woman who had once withdrawn a charge from access to criminal process.

Hogarth found indications that some of the justices of the peace required more serious injuries to support charges of assault causing bodily harm in husband/wife cases than in cases between strangers, and whether the charge was common assault or assault causing bodily harm seemed to be a matter for the discretion of the justice of the peace. As Hogarth points out, "by treating the case as one of common assault he (the J.P.) would be able to maximize his own discretion - Section 723(2) criminal code. Obviously it will be more difficult for a supervisory tribunal to check the JP acting under this section (when mandamus is asked for) than under Section 455 where the discretion is less" (1979, p.19). Hogarth recommends 1) better training and supervision to ensure that justices of the peace know and are properly applying the law, 2) policy guidelines to limit discretion, 3) reason be given when charges are denied, 4) review on appeal process, and 5) review of sexist attitudes as some justices of the peace emphasized the vindictive motives of women who were merely trying to obtain access to criminal process.

2. Crown Counsels

Let us turn our attention to Crown counsels, who, as it should be clear by now, handle a very small percentage of wife battering incidents. Typically the way for a woman to be given such legal representation is 1) if her case satisfied all the criteria for a justice of the peace taking an information (as outlined in the last section), 2) if, on being directed by the justice of the peace to family court, the woman refuses reconciliation attempts by the family court counsellor, and if 3) the woman requests a lawyer and/or her husband already has a lawyer, matrimonial property is an issue and the case is legally complex. In addition, applicants represented by the Crown are not usually eligible for legal aid and Crown effectiveness is often reduced by a high volume of cases. In criminal matters the beaten wife does not receive any legal representation (i.e., the Crown counsel is not instructed by her), and there is a general absence of legal remedies.

Hogarth recommends that the complainant should have the option of choosing family or criminal court, after having both the advantages and disadvantages fully explained. If she chooses family court, the charge should proceed by way of private prosecution, i.e., the same lawyer provided to deal with the woman's other legal needs also handle the prosecution of the accused. Hogarth suggests that this would be more organizationally efficient and would more adequately serve the complainant's needs. "Legal representation would be provided in the same way as is presently done in civil family matters; both complainants and defendants could proceed without counsel, with a privately retained lawyer, or apply for legal aid. The legal aid system would have to provide for ready access on a high priority basis for individuals who might require prosecution counsel" (1979, p.23).

Hogarth goes on to recommend that lawyers develop more creative approaches to the problem of wife abuse such as developing awareness of the services required by their clients (locksmiths, unlisted telephone numbers, transition houses, etc.) and also hold a workshop to consider procedural and evidentiary problems - what are the implications of the power of citizen's arrest, of the law of tort, etc. As one judge has pointed out,

> There exists no stated or consistent policy in all courts on such issues as: When should a warrant be issued; when should a case be proceeded with quickly by fast service of the summons and then court hearing; and when should an assault charge be taken and when should a threatening case be started (Thompson, 1978, p.105).

3. Judges

The four family court judges interviewed in the Hogarth survey seemed unaware of how isolated they were from problems of domestic violence since most cases were filtered out of the system by the police, justices of the peace, and others. The judges had little consensus about their role as judges, causes of domestic violence, appropriate forms for dispute resolution, remedies or sentencing. Hogarth's report cites "an apparent lack of any attempt at gaining an in-depth analysis or understanding of the subject (domestic violence). Instead, there was a barely competent, superficial grasp of the blatantly obvious problems which resulted in glib cynicism and facile rationalizations" (1979, p.24).

Further, Hogarth states "also apparent was that far from being arbiters, the courts are unable to break out of the traditional belief that the family is a sacrosanct unit vital for healthy society. Conciliation is a court's primary aim and causes of assault are often neutralized in the process; only the most extreme violations are able to surmount this cultural context and become defined as crimes (1979, p24). Hogarth calls for increased sensitization and awareness among the judiciary as to the full range of the problems and social pressures against the victims and the aggressors - including those that are imposed by the courts and their agents, and "a more actively involved judiciary who would have some understanding of the dynamics of family violence, more creative sentencing and more appropriate use of remedies".

It is interesting, in light of the above to read a judge's articulate description of the problems faced by judges in domestic dispute cases (see Thompson, 1979). For one thing, domestic assault charges are often accompanied by support claims and the criminal matter is treated as bargaining weapon in the resolution of the support issue. Also, as the case is criminal in nature, a procedure is dictated which is designed to focus solely on the incident which gave rise to the charge and to eliminate all other considerations until the sentencing stage. This creates enormous difficulties for the victim, who wants to deal with broader issues, and hence feels the courtroom to be artificial and governed by rules and procedures which are impossible to understand. This process creates, for the judge, a number of conflicts which Judge Thompson describes as follows:

> "I am placed in a role which requires me to deal with serious criminal behaviour, yet also asks me to treat the matter as a family problem.
>
> I know that very few domestic assaults reach the Courtroom and that the problem is a serious one and yet, in most cases, the victim either does not want to proceed with the case or does not want me to use the serious sentences which are available. It is difficult to respond to the case in a way which seems to make both parties unhappy with the result.
>
> I am concerned about deterrence of such behaviour generally, and yet these cases are dealt with in virtual secrecy. Moreover, there is a reason for privacy because of the general reluctance of both husband and wife to have these matters dealt with in a public forum.
>
> If I use the serious sentences of imprisonment or fine, I may be, in fact, punishing both parties and possibly exposing the victim to severe repercussions later. As well, because I am aware of how ineffective such sentences have been in deterring other criminal behaviour, I see little reason to hope that they will be effective in these cases.
>
> Although I want to both protect the victim and provide relief for the causes of the assault, I am aware of the relative ineffectiveness of peace bonds and of the limited

ability of the Court to enforce the conditions of probation orders. Furthermore, I am being asked to deal with interpersonal and practical problems which cannot be easily solved. Even if a solution is conceivable, the necessary resources are rarely available.

I am under great pressure to resolve the matter quickly.

I am dealing with a problem for which my training has insufficiently prepared me. Moreover, when I do seek information in the area, I am generally exposed to widely varying attitudes and expert opinion.

I know that it is both naive and simplistic to isolate certain behaviour as indicative of fault within the marriage. I can see that the role of the victim in the assault is much less easily measured when he or she is a spouse in a continuing relationship. Yet I want to draw a line which excludes personal violence even though pressures which produce that violence are often beyond my resolution.

Finally, I am a person who is shaped by my experience, values and perceptions; these colour my responses in all cases, but this area, perhaps more than any other is one in which these individual characteristics are likely to have a major effect.

When one examines this list of concerns and the various responses which they may produce, it comes as no surprise to discover that the approaches taken by Judges to domestic assaults vary widely.

These varying responses - the fact that each is successful in some cases (it being impossible to predict which) and that an argument can be made for the validity of each one - are perhaps the best illustration of the problems associated with resolution of domestic conflicts in the Court. My own view is that the law's response has, in the past, tended to wrongly minimize the seriousness of such behaviour and thus has helped to reinforce the belief that one may assault one's spouse with relative impunity. However, I am concerned that we will unduly emphasize the positive effects of a change to regular use of serious sentences against such assaulters. When we reach the stage of proposing solutions to the problem, I will argue that much more will be gained by remedies which more directly deal with the personal and practical problems that produce violent marriages" (Thompson, 1978, p.108).

Other reports on the judicial function from both Canada and the U.S. are consistent with Judge Thompson's comments. Gates (1978) refers to the reluctance of judges to treat serious assaults between members of a couple as a crime. Until 1977, it was a common practice in Washington, D.C. to transfer cases to family court; however, this practice was terminated in Pennsylvania when the legislature decided serious cases should be tried in criminal courts. Yet criminal court judges initially showed extreme leniency, repeatedly releasing chronic wife beaters on promises of good behaviour, and allowing men accused of serious assaults (e.g., stabbings, breaking ribs and limbs) to plead guilty to misdemeanour charges of "causing a disturbance" with a minor fine. Gates refers to the "dilemma" of judges who often feel they will be punishing an entire family if they send the "bread winner" to jail.

Fromson points out that "the judges who hear woman abuse cases and decide these issues of proof tend to believe that domestic violence is a private matter and does not belong in a court of law" (1975-76, p.151). According to Fromson, judges try to discourage women from going through with the proceeding, and may refer women to divorce court if counselling fails to provide reconciliation. Belief in reconciliation, skepticism of the woman's story, and reluctance to imprison a wage earner often move judges to dispose of woman abuse cases by releasing men on bail or on their own recognizance (Fromson, p.151). Fromson concludes that "the system contradicts its own ostensible prupose of protecting citizens from bodily harm and deprivation of freedom" (p.152).

One solution to the problem at the judicial level tried in New Hampshire has been to appoint special court hearing officers to handle domestic cases (National Centre for State Court, 1976). Such officers devoted more time to deliberations and preparation of the final decree than did superior court judges or clerks under the previous system which, program participants felt, improved the quality of justice in domestic relation cases. Judge Thompson's means of dealing with the problem was to establish the Frontenac Family Referral Service Project (see below), to attempt conciliation agreements out of court. Both of the above are means we have seen before, to either create a "special unit" (e.g. flying squad, Car 86, etc.) or to else divert the problem outside the system. Both strategies seem to imply that professionals inside the criminal justice system cannot or will not attempt to make the system work to meet the needs of battered women. Many blame either other professionals in the system (e.g. police blame justices of the peace, Crown attorneys blame judges and police, etc) or the law itself. In the next section we will consider policy change which would make each level of the criminal justice system take responsibility for its part in providing protection of battered women.

The usual sentences of courts, in both Canada and U.S., where husbands are found guilty are extremely lenient. Most husbands are convicted of common assault, fines are rarely imposed and incarceration is rare. Typically the court either suspends sentence and releases a husband on a probation order or else "after the finding of guilt but before the entering of a conviction, the accused is granted either an absolute or conditional discharge and is deemed not to have been convicted of that offense" (see National Centre for State Courts, 1976, p.98).

The conditions attached to either a probation order or a conditional discharge may be included, but are not limited to reporting to a probation officer, supporting the spouse, abstaining from alcohol or weapons, restitution to the victim (in cases of loss of property) and "compliance with other reasonable conditions that the court considers desirable for securing the good conduct of the accused" (National Center for State Courts, 1976, p.98). In the opinion of Goldman and others (Fields, 1978, MacLeod, 1980), leniency only worsens the predicament of the battered wife who has little protection via criminal court.

C. The Pros and Cons of Prosecution

The prosecutor's position on this issue has been put forward by Fromson (1975-76). In addressing the appropriateness of criminal prosecution in spouse assault cases Fromson suggests that the most serious cases of spouse assault are treated and prosecuted like stranger assaults but that "beyond the most heinous cases, it is questionable (to prosecutors) whether most or all spouse assault cases should be treated and prosecuted in the same way as equally serious cases of physical violence between strangers" (1975-76, p.1).

The arguments against criminal prosecution in spouse assault cases are, according to Fromson, that spouse assault is "primarily a personal problem that is often more effectively treated by social service methods which emphasize conflict resolution and rehabilitation" (1975-76, p.1). Another argument is that prosecution has been tried and has failed, resulting in neither deterrence nor punishment because an uncooperative victim-witness who fails to appear at the trial, and police officers, judges and juries who refuse to recognize the criminal nature of the acts make prosecution, conviction and punishment impossible. Moreover, it has been argued that prosecution aggravates the conflict between parties, escalates the violence and restricts the use of more effective alternatives.

On the other hand, the arguments for prosecution include the premise that violence, whether between family members or strangers, must not be tolerated, that the criminal justice system is responsible for stopping such crime and protecting citizens, that prosecutors must take responsibility for improving witness cooperation and educating judges and juries to the criminal nature of spouse assault. Proponents of criminal prosecution argue that this method has not been seriously tried and is rarely vigorously pursued until someone is serious injured or killed.

Although there is some debate about the efficacy and limitations of deterrence, people working with spouse abuse cases argue that first offenders who have no prior experience with the criminal justice system are deterred by the threat of prosecution, punishment and damage to reputation and that the ones who are not deterred are those who have had prior involvement with the system and know that it will not often act on its threats (Fattah, 1976). Goldman (1978) and Fields (1978) suggest that prosecution is even more appropriate in spouse abuse cases than in other assault cases because of the high rate of recidivism, increasing severity of each reported assault and its effect on children. Strong action is necessary early in the spiral of violence to stop it effectively.

Fromson suggests several criteria to prosecutors in deciding which cases to prosecute. These include 1) the probability of conviction, 2) the victim's wishes, 3) the likelihood of victim cooperation, 4) the victim's agreement to live apart from the abuser and 5) the availability of alternative programs. Fromson reviews the pros and cons of each criterion and then makes recommendations for district attorneys to ensure victim cooperation (including expediting cases with serious threat of future harm, establishing victim-advocate programs, sensitive interviewing and protection pending trial). Fromson reports that the National District Attorneys' Association endorsed the premise that spouse abuse is a crime and that prosecutors have the same responsiblity to respond effectively to spouse abuse cases as they have with other cases. This responsibility encompasses responding to the immediate needs of the individual victims as well as pursuing long-range strategies to prevent and control crime. Spouse abuse cases have always posed problems for prosecutors because of limited resources and a large number of cases and because of the vulnerability of the victim-witness.

At this point we will briefly review the U.S. studies on the prosecutor's role and innovative programs in that country. We will then focus on the Canadian situation.

D. The U.S. Experience

Parnas (1973) reviewed documents, corresponded with prosecutors and judges and made site visits to innovative programs in the U.S. He found that a common practice was for prosecutors and judges to "adjust without prosecution"* cases deemed serious by police. As we have already seen only the most extreme cases are likely to be deemed serious by the police, hence not even these cases are resulting in prosecutions.

Fields (1978) reports that in Washington, D.C. in 1966, 7,500 women requested prosecutors to issue warrants for their husband's arrest but less than 200 were issued. Domestic violence cases referred to the San Francisco Family Relations Bureau had similar outcomes. Of 5,000 requests received by the bureau in 1973, there were 8 prosecutions. Apparently this was because the Bureau itself "adjusted" many calls, and the district attorney refused to prosecute calls where the Bureau itself determined a warrant should be issued (Jackson).

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* This usually means to issue a warning to the assailant that he will be arrested if he continues his offensive conduct. In some jurisdictions such as San Francisco a Family Relations Bureau exists that couples this warning with a referral to social service agencies.

In Detroit the police and prosecutor have a joint diversion program at the charging level, where an informal hearing is held (similar to ones held by the Family Relations Bureau in San Francisco). The usual disposition is "adjournment without date" or the placing of one or both of the parties on a "peace bond" (Fields, 1978, p.250). Parnas states that in the first 10 months of 1970 there were 5,057 requests for disdemeanor warrants received by the Bureau, and 323 warrants were issued (6.4%). It is not reported how many of these resulted in prosecution. However, in 1972, 4,900 requests for warrants were prepared and resulted in less than 300 prosecutions (6%) (Fields, p.250).

Keeping in mind that the best estimate of an incidence/ reported crime ratio is from the Harris survey in Kentucky (where the estimate was that 8.6% of violent* incidents were reported to police), and that in that survey 57% of reported incidents led to warrants being requested at the police level. Dovetailing the Harris and Parnas data** leads to the following estimate: out of 1,000 violent incidents 86 are reported to police, and 49 of these result in warrants requested at the police level, 3 warrants issued at the prosecutorial level and .2 prosecutions or approximately 2 prosecutions per 10,000 violent incidents! This statistic leads one to echo Field and Field's remark that with domestic assaults "if the victim does not die the chances that the criminal process will deal seriously with the offender are slight" (1973, p.225). Similarily when the Miami Citizen's Dispute Settlement Centre tries to send cases it cannot resolve back to the prosecutor (after an initial diversion attempt), the prosecutor refuses to accept them. As Fields points out "diversion can become an end in itself instead of a rationally applied alternative" (Fields, 1978, p.252).*

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* Incidents measured by the Straus Conflict Tactics Scale which could legally be considered common assault (e.g. from slapping or striking to more severe attacks.

** Again, the reader is cautioned that these estimates are based on the best studies available, but clearly may not apply in some jurisdictions and involve a combination of studies.

Even on the rare occasion when the hurdles of police reluctance to press charges, attempt at reconciliation and prosecutor reluctance to charge have been circumvented, two more hurdles prevent prosecution. Initial results from "informal" court watch programs indicate that prosecutors stated that husbands' attacks against their wives were not as serious as attacks by strangers against strangers, thus disregarding the seriousness of the violence (Fields, 1978, p.253). Husbands were prosecuted on reduced charges or disorderly conduct and prosecutors failed to engage in legal argument when judges dismissed complaints based solely on the irrelevant basis that a divorce action was pending. Hence both prosecutors and judges acted in a way so as to convey tacit disapproval of criminal charges for domestic assaults.

1. New Programs in the U.S.

Several innovative programs in the U.S. are currently attempting to redress the problems cited in the preceding section. Brooklyn Legal Services has instituted a combination court watch/ victim advocate program that has negotiated with the local prosecutor's office to 1) end peace bond abuses; 2) have advocates accompany clients to criminal court, making certain that the prosecutor understands the complainant's story and that the complainant wants to go forward with the case; and 3) reach agreement to begin a joint project of divorce and criminal prosecution whenever this is the victim's wish and there is sufficient evidence (Fields, 1978). This has resulted in the Brooklyn district attorney's office contacting police in an effort to have them arrest whenever battered wife clients of Brooklyn Legal Services complained of assaults and police refused to arrest.

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* Roesch (1978; 1979; Roesch and Corrado, 1979) in reviewing the research on evaluation of diversion projects, concluded that little was known of the effectiveness of this form of pretrial intervention. Projects either had not been evaluated at all or had used weak experimental designs that did not allow for definitive conclusions. As Roesch points out, "The task for criminal justice research, like that in psychotherapy, is to ask more specific questions: What treatment, by whom, is most effective for this individual with that specific problem and under which set of circumstances?" In particular, Roesch cites one study of diversion that led to the conclusion of abandoning diversion in this particular project because of a 41% recidivism rate, but in this study the evaluation was improperly performed.

This cooperative effort appears to have worked well. The in-depth divorce interview gives an opportunity to find out if the woman feels that the only way she will be safe is if her husband is incarcerated or if a divorce is sufficient protection. As Fields points out, "in practice, very few women are in such extreme and continued danger that they need to have their husbands in jail. But in those cases, it is a matter of life and death that an informed decision be made by the prosecutor. Only one out of nine prosecutions was dismissed because the complaining witness requested it" (1978, p.254). Fields was able to achieve cooperation of prosecutors through negotiation. Jackson recommends action for malfeasance in office (failure to perform mandated duties) or federal civil rights violations be brought against prosecutors who have arbitrarily instituted policies of never prosecuting wife beating cases (Jackson).

Fields points out that a further duty of prosecutors should be to provide protection for battered wives who may have nowhere else to live but with their husbands pending trial on assault charges. The victim cannot lock the accused out of his home without court approval; therefore, a request should be made to the court that "pretrial release on the defendant's own recognizance or on bail be conditioned upon the defendant's staying away from the complaint" (Fields, 1978).

Finally, regarding the issue of battered wives withdrawing complaints, Fields observed prosecutors should recognize that the victim may have positive reasons for withdrawing her complaint. .

> The official threat of prosecution may have caused the husband to stop his assaults and to seek help to control his violence. Alternatively, the woman may decide that the only way she will be safe is to move away and leave no forwarding address. The time that the prosecutor has the defendant in custody pending arrangement or trial may give the victim the opportunity to escape. Since the prosecutor cannot guarantee her safety if there is a release pending trial or on a sentence of probation or upon acquittal, this may be the only nonviolent means of ending the beatings she has suffered. Thus, failure of a battered wife complainant to follow through may not be a waste of prosecutor time from a public policy point of view. The arrest and commencement of prosecution may have been successful in bringing a peaceful end to the violence (1978, p.257).

Other recent innovations at the prosecutorial level include programs established by the district attorney's office in Santa Barbara, California and in the Los Angeles City Attorney's office. These programs are based on the premise that "domestic violence is a crime against the community and that the state as well as the individual victim have an interest in stopping the abuse" (Prosecutors discourage ..., 1979). The goal of such programs has been to reduce the high incidence of victim withdrawal, by examining the reasons why battered women frequently drop charges, setting the goals of the prosecution to correspond to those of the complainant and adopting procedures to reduce the pressures on the complainant.

Recognizing that most battered women are confused about what penalties should be imposed and ambivalent about pressing charges, these programs have instituted procedures that relieve a complainant of responsibility for the decision to prosecute.

a) Santa Barbara

One such procedure, instituted in Santa Barbara, is for the assistant district attorney to sign domestic violence complaints herself rather than asking the victim to sign them. Thus the state rather than the victim initiates legal processes against the defendant. In addition, the assistant district attorney encourages the victim by dispelling fears and clarifying confusions about the criminal justice process. Nevertheless, if the victim does persist in opposing charges or decides to withdraw them the state does not proceed.

As of December 1979, over 90% of family violence complaints had been fully cooperative. The district attorney's office does not automaticlly recommend prosecution, rather, offenders arrested or jailed are released on their own recognizance contingent on conditions designed to protect the victim (not to return home, harass the victim, and so forth). If the offender appears to be a good diversion risk, and no serious injury occurred, he will be required to negotiate a contract for counselling and participate in at least six weeks of counselling sessions during which time a stay of proceedings exists. If he refuses to cooperate, he is prosecuted. After the counselling sessions, the offender is put on 6 months' probation. If there has been no further abuse, all charges are dropped and the case closed.

If abuse has recurred the case may be reopened and prosecuted, or a prosecution may be brought on any subsequent charge (Mersky and Fazio, 1978). The diversion option is open to offenders only once. The second time an offender appears, the district attorney attempts to get a conviction. The conviction still will not necessarily draw a jail sentence; however, longer counselling and/or probation sentences may be levied, depending on the crime. According to the assistant district attorney, many juries are hesitant to convict because they believe that a sentence such as jail will be too harsh for the crime committed. The intent of this practice is to convince juries to decide a case strictly on the basis of whether a crime has been committed, not on what the sentence will bring. Sentencing should be left to the judge.

When victims have been seriously injured, the assistant district attorney always asks for a jail sentence; and when negotiating with a public offender for a guilty plea in such cases, she reduces the requested penalty from a jail sentence to a term of probation only if the victim will not otherwise cooperate with the prosecution.

The success of the district attorney's office in Santa Barbara in ensuring cooperation from assaulted wives is noteworthy for two reasons: 1) it demonstrates that the attitudes and sensitivity of legal personnel can influence whether or not battered wives subsequently drop assault charges and appears to be an effective point of entry in breaking the vicious circle of assault, legal system hurdles, dropped charges and non-arrest practices; and 2) it puts the legal issue of compellability of spouses into perspective by showing that the main issue is ensuring cooperation of assaulted wives and how this is possible in practice without legal reform.

b) Los Angeles

In Los Angeles, the City Attorney has a special domestic violence program that also attempts to reduce the withdrawal rate on domestic assault charges (Pine, 1978). Their method is also based on the notion that domestic abuse is a crime against the state but the Los Angeles program goes even further than Santa Barbara in that the withdrawal of charges is forbidden even when the victim requests it. Apparently some victims are relieved at relinquishing this decision, others are angered by this policy and refuse to assist, although the policy is explained to all complainants at the time charges are laid. Complainants are subpoenaed as in Santa Barbara, in order to remove the woman's susceptibility to dissuasion via threats of violence by the accused. However, the problem seems to persist in many areas where protection orders are available only from civil or family courts, and are not handled by criminal lawyers. Either criminal or civil remedies are available but not both. The Los Angeles program has a very low attrition rate (5%) as does the Santa Barbara program.

c) Westchester County: White Plains, N.Y.

The most exceptional aspect of the Domestic Violence Unit of the Westchester County District Attorney's office is that protection orders are routinely made available to women filing criminal assault charges against their spouses (Fagan and France, 1978). Hence, this program gets around the problems of lack of protection for women pending an assault trial.

It is instructive to understand some of the background against which this unit was formed. Since 1960 family offenses in New York state were handled through Family Court, (even if the complaint was received in criminal court it was referred to Family Court). In theory, the woman could receive an ex parte order of protection on the day of application plus a formal Temporary Order of Protection which would remain in effect for up to one year. In practice, women were referred first to a probation intake unit for "counselling". The law provided a 60 day period after intake during which conciliation might take place and during which the family might be referred to family counselling. During this time probation officers attempted to keep the family intact, although if a woman did not give in to such pressure and remained adamant she could, at any time during this 60 day period, go before a family court judge. The problems with this system were that it applied pressure on a woman to return to a potentially violent situation, had no adequate legal grounds for removing men from the woman's home and did not adequately enfore Temporary Orders of Protection which were often violated, despite the 6 month sentence applicable to their violation.

In September, 1977, a revision of the Family Court Act (Section 812) was passed in New York which established concurrent jurisdiction of criminal and civil courts over family offences. Under this law, the woman could choose either court, but her method of filing indicated her choice. Once filed, the case could not be transferred.

The family court judge can also offer the woman protection by remanding the man to custody for psychiatric evaluation, or to jail for ten days pending Family Court trial if he denies the complaint. Although the man is represented by defense counsel, he can be ordered to post bail. If he violates the order, he can be jailed for six months or placed on probation.

This process is all but unavailable if the women chooses the private criminal complaint option. Moreover, in Westchester, there are numerous town attorneys who supplant the county district attorneys and receive all misdemeanors where local police are the complainants. These town attorneys were often reluctant to act on domestic cases and when they did it was often in a small (evening or weekday) court. The town attorneys can also reject the case, transferring it to the district attorney. This creates a delay in processing, which can be dangerous if the woman is in a violent situation. Even in some private complaints, the town attorney might ask a police officer to verify a private complaint by signature, thus placing it within the town attorney's jurisdiction. At that time, the case may be restricted from further court action.

Finally, there were problems with the election procedure under the 1977 law. The police often failed to notify the woman of her options, or to tell her if she chose not to arrest that she must file a complaint up to one week after the incident. In New York City, this practice resulted in a well-publicized lawsuit against the police department. Under private criminal complaints, either charges are filed and an arrest is issued, or any of several informal dispositions can occur. These include informal counselling with an assistant district attorney or a letter to the man warning him that he will be arrested if he continues to abuse the woman.

In October 1978 the Domestic Violence Unit of the Westchester County District Attorney's office was established to either prosecute domestic violence cases or refer the woman to a range of legal/support services. This central unit handles all arrests on domestic assaults and private complaints filed in the regional lower courts. Felony charges are signed by the Domestic Violence Unit attorneys, misdemenour charges are filed when the victim signs them.

The police notify the unit of all calls where violence or abuse is apparent regardless of whether or not they made an arrest. Hence the unit develops a central registry for all domestic abuse calls. At the time the site visit was made, plans were underway to obtain similar reports from hospital emergency rooms. If no arrest has occurred and if the victim has not signed charges, an interview occurs where she is encouraged to file a complaint for criminal prosecution. The success rate apparently depends on the woman's desire to maintain the relationship. The district attorney in Westchester is not favourable to diversion/deferred prosecution if the complainant elects prosecution, since she views the complainant as her client and diversion as offering assistance to the defendant (Mersky and Fazio, 1978). If the prosecution proceeds and the defendant is convicted, possible dispositions include: adjournment, probation, fine, or jail. Mandatory counselling or psychiatric care may be attached to any of these dispositions. The woman's safety in such cases is aided by the policy of desk sergeants not setting bail for arrested husbands when it appears that the man presents a danger if released. In addition the district attorney may request a Temporary Order of Protection upon arraignment, ordering the man out of the house pending adjudication, with a violation resulting in bail revocation.

d) Philadelphia, Pennsylvania

Pennsylvania probably has the strongest legislation in North America concerning domestic violence. The Protection from Abuse Act allows for warrantless arrest for violation of protection orders on probable cause whether or not the arresting officer is present. A womens' rights group called Women Against Abuse provides a victim advocate service operating out of the Philadelphia district attorney's office. Victims who come to file private criminal complaints are referred by police to Women Against Abuse. The WAA, assistant district attorney and victim mutually arrive at a course of action. If a criminal option is decided the assistant district attorney assists the victim in filing a private criminal complaint, an arraignment hearing is then scheduled three to four weeks later and a trial three to four weeks after that. The usual result of a guilty verdict is a term of court probation that includes mandatory counselling. If a woman decides to pursue a civil remedy under the Protection from Abuse Act, Women Against Abuse prepares a petition for an order of protection.

2. Summary of the U.S. Experience

In my opinion, the U.S. programs reviewed have advantages over existing Canadian practices for the following reasons:

1) general recognition of the seriousness of wife assault by actors in the legal system seems more advanced,

2) sensitivity to the economic and psychological impediments to carrying through charges against an assaultive spouse has led, in some jurisdictions, to victim cooperation rates which indicate that the belief that "battered wives always drop charges" are not only untrue but create a self-fulfilling prophecy in that the beliefs and attitudes of legal personnel from police, through justices of the peace and Crown counsels can influence whether or not assaulted wives carry through with charges.

3) Legal developments around the availability of protection orders and warrantless arrest for their violation appear to have improved legal protection for assaulted wives.

As with many new programs, however, some problem areas have emerged (Lehrmann, 1980). The availability of protection orders for example, is limited if police, attorneys and judges, are not familiar with procedures for obtaining them and share this information effectively with assaulted women. Furthermore, since many victims of abuse have no income, court procedures should make protection orders available to victims who file their own petitions unassisted by an attorney (called a pro se petition). Also, legal assistance for assaulted women is scarce due to a huge demand that depletes the resources of legal assistance offices, and victims of spouse assault are sometimes disqualified for legal aid because their husband's income is included in the determination of their eligibility for services. Similar economic barriers exist with regard to court fees which are required in most states when a petition is filed for a protection order. Fee waivers based on indigence are available in some states.

Further problems arise when protection orders are not available on weekends or when court dockets are so crowded that hearings on short notice are not possible.

These and other problems lead some to conclude that "There are few states in which protection orders are immediately available to all victims at no cost" (Lehrmann, 1980). Legislative changes, unsupported by attention to practical policy issues are insufficient to provide protection to assaulted wives.

Although the programs reviewed above have some differences (especially in the extent to which the state insists on proceeding with charges despite the victim's wishes), there are some similarities in their approach worth noting:

They all appear to be committed to the notion that wife battering is a crime against the state and that responsibility for pressing charges lies with the state not the victim. This is realized by:

(a) the state deciding whether sufficient evidence exists to file charges and not asking the victim to make this decision

(b) signing the complaint rather than asking the victim to sign it

(c) assessing the victim's apprehensions regarding prosecution and providing emotional support to the victim

(d) obtaining protection orders for victims in physical danger while criminal charges are pending

(e) subpoenaing the victim/witness

(f) requesting probation and mandatory counselling for the abuser if the victim does not want him jailed

(g) seeking a guilty plea from the abuser to avoid the trauma of trials and testimony for the victim

Using these techniques, some prosecutors have reduced the percentage of battered women who drop charges to below 10% (Prosecutors discourage ..., 1979). The prosecution models reviewed above are examples of innovative programs which attempt to address some of the previous protection for assaulted wives. In addition to these programs (most of which attempt to get mandatory counselling for assaultive men rather than jail), a variety of diversion programs exist which attempt to resolve marital conflict through mediation and other means.

Some of the arguments for and against prosecution (or conversely against and for diversion) have been put forward above (see Fromson, 1975-76, p.14). Below are some diversion programs (both Canadian and U.S.) that have reported good rates of "success" in terms of resolution of conflict to the satisfaction of both parties.

E. Issues Regarding Access to Courts: Diversion Projects

1. Frontenac Family Referral Service, Kingston, Ontario

The Frontenac Family Referral Service in Kingston, Ontario established a diversion - conciliation project in 1975, "to provide an alternative to Family Court and the adversary system to those contemplating separation and those already separated, to demonstrate that voluntary, mutually satisfactory agreements could replace the court process in many cases of marriage breakdown, to test new methods of assisting those with marital difficulties and to promote early recourse to counselling services" (Couples in Crisis, n.d.).

The emphasis of this project is clearly on "conciliation and early intervention, to see if agreement could be reached with the estranged spouses before seeing a lawyer or intiating court action" (p.15). Included in the Frontenac Project was a Domestic Disturbance Program "to encourage couples who called police to use counselling and the court to reduce violence in the home, to give police officers a readily available counselling service as back up and to collect data on this category of calls to the police" (pp.23-24).

Referrals were made directly by the police although police use of the program was inconsistent. Only 205 calls were reported by police in 16 months; 178 of them were first calls. These couples were all contacted by letter: 85 responded; 27 came for counselling for which both members showed on 18 occasions; and 17 were reported to have taken "action to reduce violence", although how this was measured is not reported. A questionnaire available from the Frontenac Family Referral Service presumably would shed more light. The "treatment" program seems to have focused inordinately on alcohol abuse as a "common factor in marriage breakdown", hence it apparently was treated as a cause and not a symptom. Mutual support groups were established but men generally did not joint them. There is no report of the specific treatments for family violence or of the requirement for men to acknowledge violence as a necessary preliminary to mediation.* The Frontenac Project reports that 50% of couples it dealt with achieved "complete resolution through the conciliation process" (Couples in Crisis, n.d., p.43). One has to ask, however, whether "resolution" for these women meant the best of undesirable alternatives and whether violence recurred.

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* Unless such an acknowledgement is made, women sometimes wind up "bargaining" for their legal right to freedom from violence (see Goldman, 1978).

There is strong feeling that spouse assault cases cannot be resolved through mediation without an admission of fault by the abuser (Fromson, 1978). Otherwise the abuser may never realize the wrongfulness of his acts and may continue to abuse his spouse. Hence, many feel a pledge to stop the violence must precede the bargaining session. Otherwise the dominant/submissive nature of the relationship could lead to the already abused spouse having to bargain for physical safety to which she has a legal right. One of the duties of the mediator is to equalize the power position of the parties in mediation. When a case is diverted prior to arrest, the husband maintains his power position vis-à-vis his wife. However, if the case is diverted from a prosecutor's office, this power advantage is neutralized by the fact that the husband is subject to prosecution.

2. Night Prosecutors

Some counties in the U.S. have started Night Prosecutor Programs which are also, in effect, citizen dispute settlement centres. Martin (1976) reports one such program in Columbus, Ohio, coordinated by prosecutors and conducted by law students to do volunteer mediation of minor disputes and warn of possible legal consequences on more serious cases. One goal of such programs is to alleviate caseload pressure on the court, thereby permitting a high degree of attention to serious crimes. Advocates of such programs claim they save money by avoiding costly court proceedings. During the first year of the Columbus program, only 2% of 3,626 direct complaints resulted in criminal charges. However, Martin feels that the danger in such programs is lack of protection for the woman and reluctance of district attorneys to follow through if the husband violates the terms of his mediated "contract".

Another such program has been established in Dayton, Ohio (Fraser and Froelich, 1979). Complaints originate with police, are referred to the prosecutor's office and from there to the Night Prosecutor Program. Not all complaints go to the program; some are filed in court, depending on the seriousness of the charges. The program runs from 6 p.m. to 10 p.m. in the evening and is administered by law students and crisis therapists working as a team. The goal of the hearing is to obtain a negotiated settlement and prevent future violence.

Again, advocates of the program cite reduced costs ($10 per case vs. $100 in court), a reduction in the number of cases on the municipal court docket allowing speedier trial and more preparation time for city prosecutors, and as the authors claim: "comparing outcome options, court proceedings may lead to one year or less of jail, a fine, probation or a warning. Night court options are negotiated resolutions, social agency counselling or referral, or in a few instances court referral. Night court options appear least costly and more desirable to all involved" (Fraser and Froelich, 1979, p.244).

Mutually agreed upon reconciliations and separation agreements accounted for 40% of the hearing outcomes, 10% involved restitution, 10% referrals to social agencies and 7% wound up in the courts. The authors cite, to bolster their case for diversion, that 50-60% of all persons arrested on domestic disturbances have been arrested previously. They take this as evidence of "high recidivism rates after court processing" (Fraser and Froelich, 1979). There is no evidence from the data they cite, however, that the criminal justice system was used effectively against the offender after the initial arrest).

Clearly, the issue surrounding these diversion programs is whether they can be used effectively to alleviate court crowding and allow better court handling of more serious crimes without endangering the victim. Just how much the criminal justice system has to be used as a threat in such cases is an empirical question with inconsistent answers as was demonstrated in the previous section on prosecution.

3. Miami-Dade Dispute Settlement Centre

Some Diversion programs train citizens to act as third parties in conflict cases. One example is the Miami-Dade Citizen Dispute Settlement Centre which began in 1975. Dellapa (1977) states that it handled 2,063 cases and resolved 94.2% of them to the reported mutual satisfaction of both parties. The recidivism rate was 4.1% and the wait time - from date of complaint to hearing - was cut from 94.3 days through the criminal court system to 7.2 days. The dispute centre absorbed 42% of the county court crime division's misdemeanour penal caseload and its reported cost per case is only $26.40 compared to $250.00 per case through the justice system. Both parties enter into written contracts which, if violated, can lead to the case being returned to the prosecutor. Dellapa reports that most violations are minor and are usually settled by a second mediation. From this report, it sounds as if the Citizen Dispute Settlement Centre primarily handles misdemeanour assaults and coexists with Safespace, a shelter/advocate system for women involved in more serious assaults. Mediation appears to be appropriate only when both parties agree to participate, envision a continuing relationship, have had a recent (as compared to a long) history of conflict and where severe violence has not occurred.

4. Pima County, Arizona

In Pima County, Arizona a Pre-Trial Release Program exists based on the notion that the "courtroom is not the proper setting and the adversary system is not the proper mode for settling a complex, deep-rooted interpersonal conflict" (Lowenberg, 1980). The Pima County model was created in mid-1978 as a viable alternative procedure to traditional court handling of peace bond cases and criminal misdemeanour cases involving a continued interpersonal relationship.

Cases are diverted from the County Attorney's office to the Pre-Trial Release Program with the objective of 1) avoiding court intervention, 2) avoiding law enforcement intervention, and 3) resolving the conflict in a peaceful manner. If mediation agreements are not reached in three weeks, the case is referred back to the attorney for prosecution. The Unit receives about twenty cases per month and contacts both parties in each case to solicit their commitment to working on the problem. At the end of the mediation session, they sign a formal contract and the mediator does a two month follow-up in each case.

In addition, an outreach project in Pima attends domestic dispute calls after the police have restored order and provides crisis intervention, victim advocacy where warranted and long term mediation when requested. In more serious assaults, where mediation is inappropriate, but where a couple wants to preserve a relationship, a treatment program is established where both the abuser and the victim participate in separate programs for six months to one year (Lowenberg, personal communication, 1980).

One of the unique features of this program is the extent to which attempts are made to accommodate the victim's wishes on the conditions for prosecution or non-prosecution of the defendant. Generally, the defendant is released on his own recognizance to a relative or friend's residence with the provision that he not contact the victim by telephone or in person during the course of the judicial proceedings. A substantial number of wife/victims asked that the defendant be given treatment for severe alcohol or emotional problems (Martin, 1978). The problem of getting the batterer into therapy is a tricky one since it usually requires some pressure from the criminal justice system which in turn raises the question of how much a man can benefit from "enforced therapy" - an issue that will be discussed later.

Of 139 cases before the city prosecutor in Pima, the victim wanted to prosecute in 17 cases and the defendant wanted to go to court in two cases. Hence in the large majority of cases mediation and/or therapeutic dispositions were the alternative of choice. It is interesting to compare this statistic with the extremely high prosecution rates of more than 90% which have been reported in Santa Barbara and Los Angeles. One conclusion to be drawn from this apparent discrepancy is that people in post-battering crisis states are extremely susceptible to influence by professionals. In jurisdictions with a prosecution orientation, victims will comply with prosecution (if their fears are properly allayed). In jurisdictions with a mediation orientation, victims appear to go along with this proposal. Lowenberg is currently doing an analysis of 25 cases being mediated to determine the rate of recidivism or noncompliance.

F. Issues Regarding Access to Court: Criminal vs. Family Court

Some writers complain that in cases of domestic violence the family court supports the preservation of family stability at the expense of the woman's safety. While the family court attempts to "adjust" cases via preliminary hearings, etc., the woman is unprotected from further violence and the emphasis on attempted conciliation, does not offer the woman the force of criminal law for protection. Goldman cites, as examples of the "failings" of the family court route, New York's family court where the court typically issues protection orders and can order medical or psychiatric treatment and Chicago's Court of Domestic Relations where judges typically issue peace bonds. However, given the critique of criminal court, the outcomes of family court do not sound that different. An empirical court watch tracking study is required to firmly establish whatever differences do exist. The issue still seems to be one of balancing protection for women against overloading the criminal justice system. The clearest and most immediate source of protection for women would be effective warrantless arrest for violation of protection orders. It seems that the authority of the criminal justice system can and should be used to back up any disposition. Lehrmann (1980) believes that counselling orders are taken more seriously when they come from criminal court and that a letter from a district attorney is often sufficient to convince an offender to obey court directives. However, the criminal court's reputation could be matched by family court if the family court established protection of the woman as a priority of equal magnitude to preservation of the family. Family court judges have the power to impose the same sentences as criminal court judges (Smith, 1980). The family court would have the legal power to do so if its policy of keeping the family together were adjusted (Law Reform Commission of Canada, 1974). Other possibilities include "concurrent jurisdiction" where family and criminal courts jointly handle domestic violence cases. Regarding protection of women, it seems that in addition to strong enforcement of protection orders, protection is better obtained by not diverting severe assault cases too soon. Even men who are found guilty of first offenses of domestic assault need not necessarily serve a jail term but can be directed by judges to more creative solutions to stopping their violence.

At present a common practice seems to be that the "more serious" cases of wife assault (i.e. assault causing bodily harm, attempted murder, wounding) are directed to criminal court while common assault cases that are "family matters" are treated as less serious and directed to family court "for counselling". The problems with this practice are that it creates a reliance on the initial police report* and that the criminal sanction is not applied where family court fails to use its legal powers and attempts to keep families together despite evidence of common assault.

The following recommendations are made: 1) that clear policy guidelines be developed regarding the processing of wife assault cases through family or criminal court, 2) that, regardless of whether family or criminal court is used, the full powers of legal sanction should be employed in wife assault cases.

G. Outcomes of the Court Process: The Prospect of Effective Treatment Groups for Wife Assaulters

A variety of issues raised in previous sections of this paper point toward the necessity of effective therapeutic groups for men as an outcome of court process. Many actors in the criminal justice system, from police to judges, have an aversion toward removing a "breadwinner" from the home via a jail term. Issues of special deterrence assume a punishment effect of arrest and incarceration but do not couple these with the possibility of therapeutic experiences for the incarcerated. Reports of district attorneys unable to get jury convictions for wife assault cases exist because the jury considers jail unfit punishment. The attitudes of legal actors and jury members alike require special consciousness raising programmes before wife assault will be seen as comparable to assault between strangers, but willingness to arrest, charge and convict may be increased independent of this attitude change, if legal actors and jurors felt an effective treatment existed for wife assaulters. Furthermore, if such a treatment existed, specific deterrence would cease by definition to be problematic.

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* Unless police see clear evidence of an indictable offense, a woman is often left on her own to lay an information and the eventual outcome, it she proceeds, will be an attempt by family court counsellors to effect reconciliation.

There are a variety of junctures in the legal process where therapeutice treatment groups could be used. At the earliest, for couples who wanted to stay together, where the man admitted to a behavioural problem with violence toward his wife, and where the violence was incipient and not severe (i.e. common assault, but not an indictable assault offense), therapy could occur via a pretial diversion or a condition during a stay of proceedings (which if not successfully fulfilled, would lead to resumption of the proceedings). For cases where the male was uncooperative, unwilling to admit fault, or where the violence was severe (i.e. an indictable offense) or a second offense (or more) before the court, and where the accused is convicted, therapy could be part of a conditional discharge or a condition of probation. As a condition for a stay of proceedings, therapy presents one major legal problem - defense lawyers may advise clients against it, viewing voluntary therapy as an admission of guilt. It also presents a therapeutice problem - what constitutes "successful" fulfillment of a judge's condition? As a court-ordered treatment, the major issue becomes one of whether imposed therapy can be effective at all.

At present it is not known which of the above paths would have the best prognosis for behaviour change. Similarily, there appears to be little or no support for such therapeutic groups, although they have been tried in a number of places in the U.S. (Tacoma, Boston, San Francisco). The most thorough therapeutic intervention system is one in Tacoma, Washington reported by Ganley and Harris (Ganley, 1980 and Ganley and Harris, 1978). The Ganley and Harris program uses an extensive and well developed assessment procedure followed by a relearning program based on "cognitive" behaviour modification techniques (See Novaco, 1976). The term "relearning" is used as the therapists believe domestic assault is a learned pattern of behaviour (70% of battering males witnessed or were victims of domestic assault in their family of origin) (Ganley and Harris, 1978).

Ganley and Harris' program instructs batterers 1) how to differentiate feelings of anger from other feelings (they are initially poor at doing this), 2) how to express anger other than violently (via assertiveness rather than aggression), and 3) physical and relaxation methods of coping with stress. They work not only with physical battering but include "psychological battering" (for example, male attempts to completely control and dominate the wife via intimidation, constant criticism, isolation). In general, Ganley and Harris try to teach batterers that they are responsible for and can control their violence and one of the ways in which this is done is to make explicit to the batterer the "internal dialogue" by which he screens and interprets the events which "trigger" his violence.

Ganley prefers court directed treatment to diversion. She believes the therapeutic outcomes are better for the former because battering men tend to be impulsive and externally directed; hence, they need consistent external motivation to persist through therapy. Expecting a wife who is in a post-battering crisis to provide such motivation is unrealistic, it is too difficult for her to be consistent in such a state. Ganley believes the clearest, most consistent message to the violent husband comes from the criminal justice system that his violent behaviour is wrong, bad and illegal and must stop. Through therapy he is given the opportunity to control this behaviour himself, however, if he does not do so, incarceration must be used to emphasize the message that the state will not tolerate such behaviour.

Therapy for battering males requires a program specially set up by psychologists who have some expertise in the problem. Psychiatrists tend to view domestic violence as "abnormal" and to treat it with psychotherapy or drugs, neither of which is very effective. Programs like Ganley's treat domestic violence as learned behaviour and emphasize the batter's responsibility and potential for controlling it. These philosophical underpinnings are consistent with the criminal justice notions of individual responsibility and make such therapeutic programs the therapy of choice for battering males.

The issue of the effectiveness of compulsory therapy is probably best dealt with by attempting to establish as much intrinsic motivation as possible for men taking therapeutic anger management programmes. The criminal justice system provides a necessary first step in getting the male to recognize, via legal sanction, that this behaviour is wrong. A necessary next step is to get him to take responsibility for correcting or changing that behaviour. Behavioural contracts are an effective means of doing this. They involve a written contract that could be negotiated between, for example, a convicted assault and the court to satisfy a probation order, or a husband and wife via a family court counsellor for pre-trial diversions. All contracting has, as its premise, an admission of responsibility for the violence by the husband (see Fromson, 1975-76). The specific details of the contract would need to be defined but the purpose and intent is to build into the husband's agreement a notion of choice and responsibility for his behavioural change.

The problem of a "successful" fulfillment of the contract could be settled in two ways: first, by "metered counselling" whereby men in therapy groups have to earn time credits. If participation is minimal, credits are withheld at the discretion of the therapist. The man is simply told to leave for the day and that he is not working hard enough in the group and will not receive credit for the group. Second, a long term evaluation of the success of both groups and individuals at achieving their goals of reducing violence is necessary. A man in these groups should, upon completion of the group, be put on a six-month probationary period of living with his wife (where feasible) with an evaluation done of his success at being non-violent during this period. This evaluation would include both self-reports and independent reports from his wife and, if violence should recur, would be terminated with the possibility of both original and new charges.

The milieu of the groups is very important. Ideally, a six-week period during which the male lives in a 24-hour "in patient" therapeutic environment would constitute the therapeutic situation, followed by six months of once-a-week group therapy sessions. However, where this was unwarranted or not feasible, individual programmes could be tailored. One idea would be for a judge to sentence assaultive males to jail on weekends for a fixed period, during which time therapeutic services would be provided. This would 1) enable the male to continue in his role as a breadwinner, 2) remove him from the home during high risk times of the week (weekend nights), and 3) provide a therapeutic milieu so his time of incarceration would have rehabilitative potential. In any event, given the promise of anger management therapy, and absence of effective alternatives, some form of therapeutic programme seems called for.

CHAPTER IV

Integrated Models

In the previous chapters, we have reviewed issues, new programmes and possible future directions for the various components of the criminal justice system. In this chapter we will present some hypothetical models which we hope will provide some direction as to how these components might be better integrated.

Model A: Innovative and Comprehensive

Model A represents an ideal form of service for assaulted wives, it attempts to be comprehensive by including representatives from all community agencies that are likely to come into contact with assaulted wives and it is innovative in that it requires services be created that would not presently exist in most communities. A diagram of this model is presented below. Such a model would serve a number of functions.

> It would increase police service by establishing clear police policy on arrest for wife assaults:
>
> On indictable offenses police would arrest and report.
>
> On summary offenses police would provide information cards to women with transition house and victim advocate phone numbers and would report to a victim advocate service.
>
> It would establish a generalist-specialist format based on the London, Ontario experience.
>
> Family dispute counsellors would also report to an advocate service but would provide specialized services on the spot such as counselling and referral plus closer surveillance over recidivist calls that had not yet resulted in legal action.

Even with specialists, all police would be required to follow the above policy guidelines regarding arrest and information cards.

Since only about one in ten wife assaults come to police attention, an interagency management team could be involved in the detection of wife assault. This team would meet on a regular basis to share information about families where assault was suspected and the risk of future danger seemed high. This might be determined by evidence of repeated calls to police, hospital admissions, etc. or by evidence of escalation or increased severity of conflict.* Hospital emergency wards, for example, often have intake counsellors who should be trained--as should medical personnel--to look for evidence of and inquire about possible wife assaults. Divorce lawyers should also be educated to advise women to contact family dispute counsellors, although again it is difficult to see how lawyers could report directly to a management team without violating client confidentiality. Transition houses typically only see women who have no other resources (e.g., friends, family to stay with) but wife assaults cut across class lines, hence it may be harder to detect amongst middle class women who use personal resources rather than transition houses or police. Representatives from hospitals, transition houses and the Family Dispute Counsellors could share information that, when pieced together, could increase detectability of wife assaults. Problems of confidentiality could arise, however, and a legal basis for the sharing of information as exists at present in some provinces for dealing with the problem of child abuse might be necessary. Both the family dispute counsellors and the management team represent innovative services.

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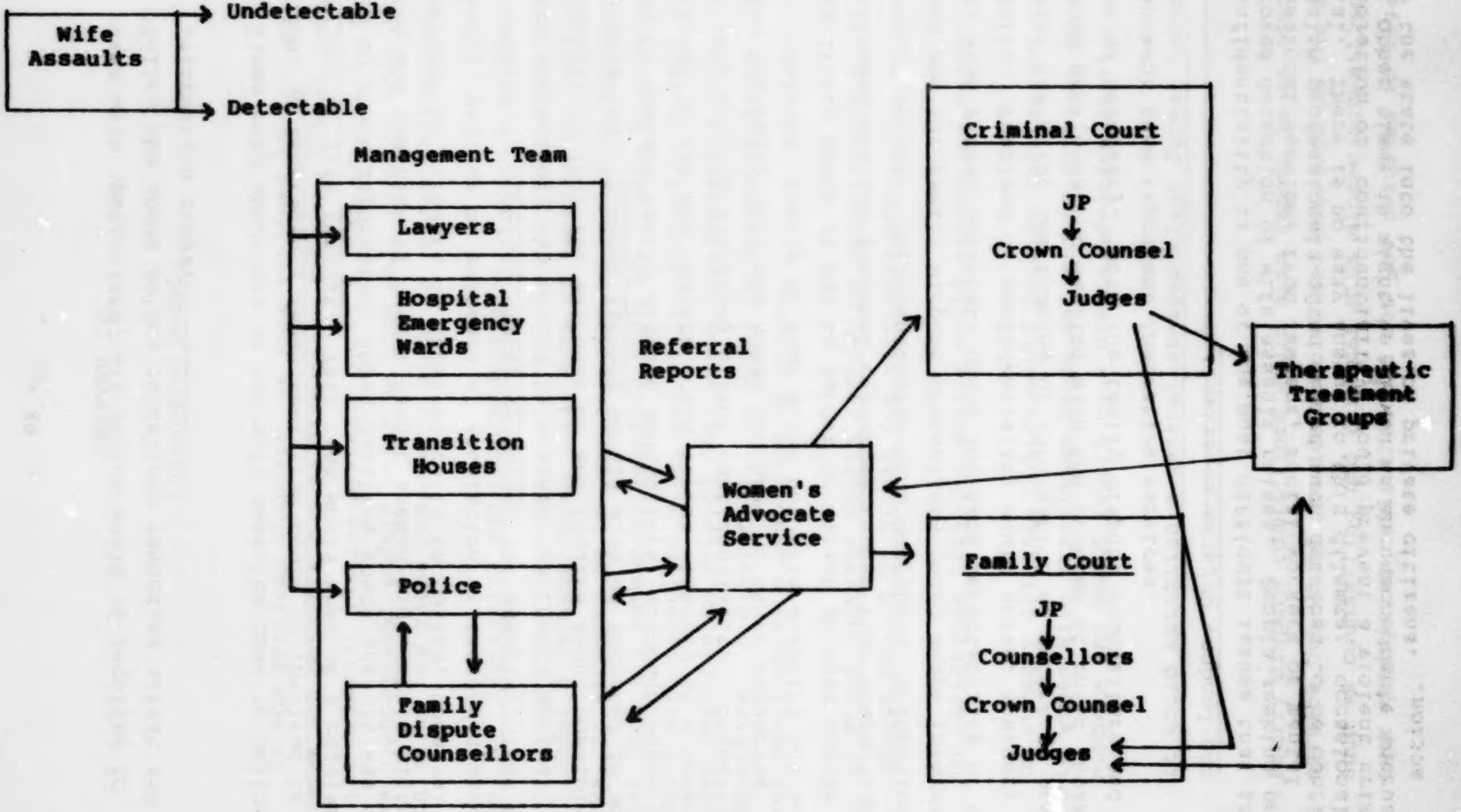
* Confidentiality is one of the most difficult issues that improved detection of wife assault raises. People seeking professional services from lawyers, social workers or mental health professionals often desire such services to be confidential. There is no easy answer to this dilemma: occasionally a violation of "confidentiality" could prevent a violent crime, at other times it might be viewed as an unacceptable intrusion by the state into the lives of private citizens.

MODEL A


Wife Assaults
Undetectable
Detectable
Management Team
Lawyers
Hospital Emergency Wards
Transition Houses
Police
Family Dispute Counsellors
Referral Reports
Women's Advocate Service
Criminal Court
JP
Crown Counsel
Judges
Family Court
JP
Counsellors
Crown Counsel
Judges
Therapeutic Treatment Groups

A women's advocate service, located in the courts and funded by provincial Attorneys General represents the focal point of this model. This service would receive referral reports from police, family dispute counsellors and the inter-agency management team and would attempt to contact all assaulted wives immediately after police intervention where it was indicated that such contact would not increase the danger to the woman. Thus, some kind of 24-hour service would be required, perhaps using a local centre's telephone line for late night calls.

The women's advocate service would provide legal advice and emotional support to assaulted wives and generally assist the women to find the best options for themselves from the criminal justice system. The women's advocate service might be staffed by women lawyers with special expertise in the issues raised in chapter three of this document. An advertising campaign urging women to notify this service of their situation might be most effective. Such campaigns have already been tried in some places in the U.S. and their efficiency could be assessed on this basis.

Arguments in support of such a service include a) the difficulties that women have in gaining protection and service from the criminal justice system, and b) the special problems created by the vulnerability of the woman after an assault. The women's advocate service could provide a special blend of emotional support, knowledge of legal options and aid in initiating and carrying through legal process. In addition, the service could provide a central registry for information on wife assault cases, since it would receive referrals from police and transition houses, and would also be knowledgeable about local and current court practices on wife assaults. Prior to implementing such a service it is recommended that a close study be done of the Westchester, N.Y.; Santa Barbara and Los Angeles situations where the advocate function has been taken over by existing criminal justice system personnel and contrast these with the Philadelphia situation where the service is provided by a women's rights group working with the district attorney's office (see Chapter 3).

A variety of concerns around the establishment of such a service exist. These include:

(1) possible dilution of transition house funding resulting from the establishment of a new service.

(2) redundancy of service - overlap between the new service and that of transition house workers, legal aid lawyers and court workers.

(3) increased bureaucracy that will further hinder service to assaulted wives.

(4) inadequate funding leading to unrealistic caseloads and eventual "burnout" of personnel.

(5) difficulties with location of the service - location within family court might improve relations with Crown counsels, and so forth but it might limit the service to family court solutions to wife assault; a location outside and independent of both family and criminal court would protect the independence of the service but perhaps at the cost of rapport with Crown counsels.

For these reasons, we will consider an alternative model below that does not create a new women's advocate service but instead concentrates on developing existing resources within the criminal justice system.

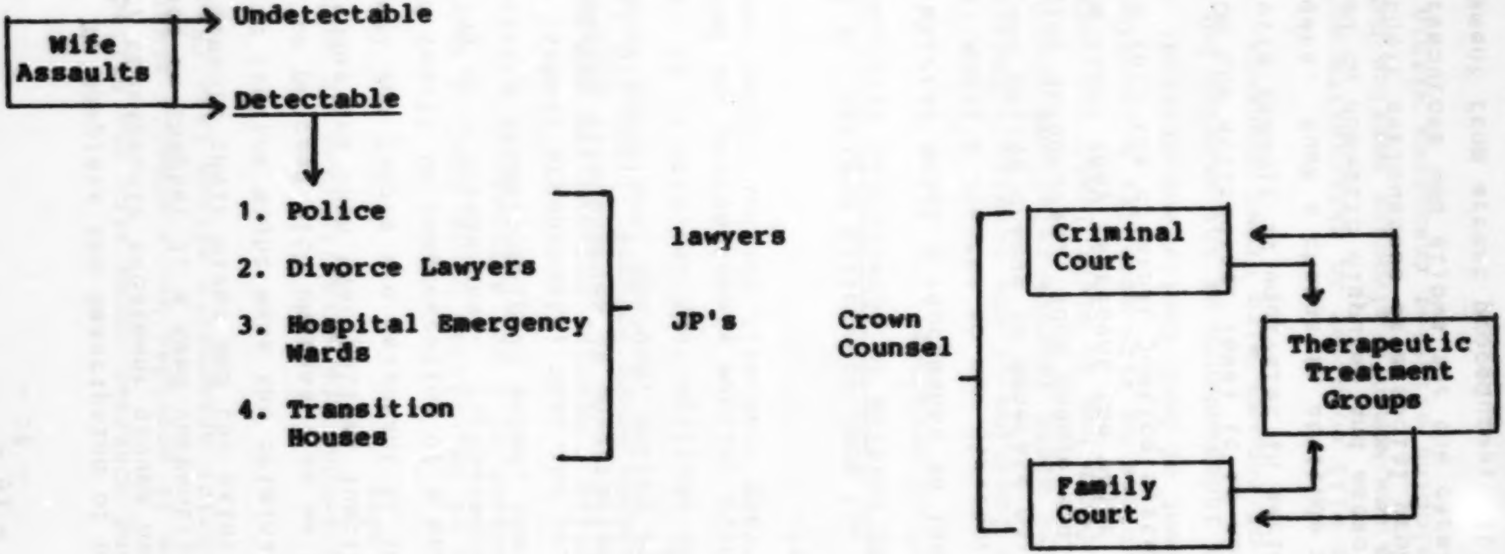
To complete the description of our comprehensive model, however, therapeutic treatment groups need to be mentioned. As described in Chapter 3, a need currently exists for treatment of men who assault their wives and the existence of an effective therapeutic service might make the criminal justice system less reluctant to proceed with charges. As we have pointed out, current attitudes are such that police, justices of the peace, Crown counsel and judges are reluctant to implement a process that would result in incarceration of a male who might still be functioning as a breadwinner. Furthermore, in cases where an assaultive relationship is ended, the assumption is sometimes made (albeit erroneously) that the problem has ceased and that, proceeding with charges is unwarranted. Clearly, regardless of whatever structural changes, policy changes and outcome options occur, it is critical that attitude change programmes be established for professionals working with wife assault cases.

Model B: Maximum Efficiency from the Existing Services

Whereas Model A represents an ideal model of innovative services, Model B creates no new structures but attempts via attitude and policy change to generate maximum service out of the existing structures. Such change would have to begin with the police since they represent the major input source of wife assaults into the criminal justice system.

On the attitudinal level it is necessary that police come to view wife assault as equivalet in seriousness to assault between strangers. Such a change in attitude may require training time devoted to domestic disputes and assaults that is commensurate with their seriousness as a social problem and their drain on police resources and allows for the careful separation of conflict management from arrest procedures. It is recommended that in order to sensitize police to the seriousness of the problem, that

MODEL B


Wife Assaults
Undetectable
Detectable
1. Police
2. Divorce Lawyers
3. Hospital Emergency Wards
4. Transition Houses
lawyers
JP's
Crown Counsel
Criminal Court
Family Court
Therapeutic Treatment Groups

each police recruit spend at least two weekend nights in a transition house. Furthermore, more emphasis needs to be placed in police training on the relationship of the officer's personal values and attitudes to his on-the-job behaviour.

As well as police attitude change, clear policy guidelines need to be established. This might involve an analysis of present policy (the means for making this assessment are outlined in the (Research Appendix) on a national basis, coupled with recommendations for change at the local level. For example, referral to transition houses requires the existence of such shelters in a local jurisdiction.

In Model B, the police recommendations of Chapter 2 (which were repeated in Model A) would still apply - police would provide referral cards to women on all domestic calls where violence of any sort either had occurred or seemed a future possibility; common assaults would be handled by advising a woman to press charges and referring her to legal aid, family court counsellors or a justice of the peace. Assault causing bodily harm would be prosecuted by the state, the officer would immediately refer the woman to a physician to have her injuries examined* and would file a report with Crown counsel who would initiate proceedings for the state. Both the physician and the assaulted wife would be compelled to testify.

In cases where the woman, despite the assault, wished to continue the relationship, it would be explained to her that the state's objective in proceeding with charges is not to incarcerate her husband but to apply legal leverage that he undertake therapeutic treatment with a view toward ending the violence.

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* Special courses for doctors should be provided on the recognition of assault related injuries as well.

In cases where, upon police intervention, the danger to the woman is estimated to be high, she should be removed to the home of a friend or relative deemed safe or to a transition house. Transition house workers would refer her to legal aid or to Crown counsel for advice on any additional legal proceedings (besides the charge of assault causing bodily harm which the state is proceeding with) that she might wish to initiate. At this time, the issue of proceeding in criminal or family court becomes relevent.

To make this model work, special training for justices of the peace and Crown counsels regarding wife assault would be necessary to alleviate the problems described in the Hogarth report (see Chapter 3) and to generally sensitize them to the issues raised in this report.

In order for this model to work increased funding for transition houses would be necessary, since most are already overcrowded, understaffed, and have insufficient beds to handle current demands. Many of the procedural and policy issues raised in the description of innovative U.S. programs are of relevance to the current model: ex parte protection orders available around the clock would be necessary, and enforced when violated with police being mandated to report violations to Crown counsel. In addition, the use of warrantless arrest for violations of protection orders should be considered (as happens under the Pennsylvania Protection from Abuse Act). In other words, the objective of the state is to protect the woman and the underlying assumption is that an assaulted wife is entitled to the same protection that is available to an assaulted stranger.

Certain options would be available to a husband accused of assault. If he obeys the protection order and agrees to therapy, charges can be stayed. However, if he defaults on either or fails the criterion of metered counselling, charges could be reopened. If he fails to cooperate, and is found guilty, he risks a criminal record and, could be ordered by the court to attend a therapeutic group.

This model requires no new agencies, or additions to the criminal justice system. The only exception would be that in localities where sufficient treatment facilities for batterers do not exist, they would need to be established. What this model would require is:

1. special training and attitude change for all criminal justice system personnel involved with assaulted wives-police, justices of the peace, family court counsellors, Crown counsels, judges;
2. explicit policies;
3. sufficient funding so that transition houses, Crown counsel, and others are not required to handle unmanageable caseloads;
4. effective treatment programs for battering husbands; and
5. specialized training for both divorce lawyers and hospital emergency personnel.

Model C: Between the Necessary and the Ideal

Model B described above indicates attitudinal and policy changes that must occur for the criminal justice system to offer adequate protection to women who are assaulted and/or threatened and harassed after an assault by their spouses. To say that such changes are necessary is not to say that they are sufficient to provide the protection described. Some or all of the system-structural changes advocated by the Ideal Model A may be required.

One could argue for example, that attitude change for the personnel in a system takes some time and considerable effort. Levens and Dutton (1977), for instance, have documented the difficulty in establishing such change in a police department and other authors have analyzed the resistances to such change (Bennett-Sandler, 1975). It would be useful to have some retrospective analyses of U.S. police departments where such change has occurred, in order to know how to bring it about most effectively and what sort of time frame is required.

One function of a women's advocate service could be to aid women in the manner described during the "transitional stage" of the legal process when attitudes and policy have not yet changed to the requisite positions for maximum efficiency in protecting assaulted wives. In such a model, the advocate service would take as part of its mandate to lobby for policy change and to attempt to influence values, assumptions and attitudes of criminal justice system personnel. The advocate service would be instigated as a short term service, a form of "pump priming" until Model B (above) began to function efficiently. Nevertheless, the initial impetus for the types of attitude/police changes described must come from provincial attorneys general and federal ministries such as Justice and the Solicitor General. However, there are real problems associated with change programs instituted from the "top down" (Dutton and Levens, 1980) and proper cooperation of mid-management within police departments is essential.

Thus, we are recommending in this mixed Model C, that women's advocate services be considered as temporary measures until policy/attitude changes are completed. Similarly, as the London, Ontario, model has demonstrated, a specialist family dispute team is extremely useful. However, it is an expensive addition to the police force and is probably dispensable in areas where it would prove to be an expensive luxury. If this is the case, the recommended policy of issuing referral cards on suspected or real minor assaults and arresting on assault causing bodily harm should be followed by "generalist" police officers.

The team-management notion, also recommended in our ideal Model A could be replaced by having the women's advocate service perform this information gathering and collating function although the greater efficacy of the management team at detection and information sharing would be lost. Again it must be stressed, that greatly expanding the mandate of the women's advocate service runs the risk of simply overworking the service. New agencies often attempt to take on too much resulting in tremendous job stress and "burnout" for the agency workers. This can create a sense of failure and retrenchment which could prove fatal to the long term goals of the service. Careful planning and resource allocation is very necessary.

Finally, in this mixed model, as in Models A and B, some form of therapeutic treatment for assaultive males seems necessary. Comprehensive models of family violence are beginning to emerge (Belsky, 1980). This development suggests that the initial strategy for diminishing family violence involves direct therapeutic intervention with the offenders but, ultimately, a form of "primary intervention" that addresses itself to the broader cultural values and assumptions our society holds about family life is necessary.

In summary, Model C retains both the police policy of issuing referral cards and the availability of assaultive men's therapy groups as proposed in Model A. A women's advocate service is recommended as a temporary measure, pending some success of attitude/policy changes initiated within the criminal justice system. The inter-agency management team, and the police family dispute team are dispensed with and some of their functions taken up by the women's advocate service and "generalist" police officers respectively. It should also be mentioned that the issue of whether these cases should be tried in criminal or family court is still unresolved and that some resolution of that issue is pertinent to all of the models described above.

CHAPTER V

Summary and Recommendations

Incidence studies reported in the introduction to this report indicate the extent of the problem of wife assault. Furthermore, the seriousness of wife assault should not be underestimated as many cases result in serious injury and some result in death. Intimacy is not necessarily a form of protection, often it is the source of danger.

The social agency most often called on to deal with wife assault cases is the police. A common approach taken by police on such calls is one which concentrates on stopping the violence for the evening, occasionally by removing one party. While referrals to outside agencies have increased somewhat since the advent of conflict management training, police arrest rates have been low on wife assault calls both before and after the advent of conflict management training. Recommendations for police practice in handling wife assault calls include the following:

- clear and explicit departmental policy that arrests be made for assault causing bodily harm by the attending officers - that women be encouraged to proceed with charges on common assaults and be given relevant information about how to do so.

- that women be given referral cards on all calls attended by police which would contain phone numbers of transition houses and legal and social services.

- that police attitudes be addressed in crisis intervention training courses, specifically where those attitudes affect decisions about arrest on wife assault calls.

- where feasible, auxiliary specialist services be provided to aid police in handling of wife assault calls.

In examining the assaulted women's access to court it is clear that legal, procedural and policy issues all require attention. Peace bonds and injunctions need to be enforced. Ex parte interim restraining orders need to be made available on a 24-hour basis. Evidentiary issues such as the compellability of assaulted wives as witnesses against their husbands in proceedings of the crown, res gestae, and tortial immunity need clarification. The attitudes of legal personnel (justices of the peace, Crown prosecutors and judges) toward the legitimacy of wife assault charges, the seriousness of the act and indeed toward women in general need to be scrutinized. A variety of factors tend to interact to make the criminal justice system relatively unresponsive to wife assault; for every 10,000 incidents defined as violent on the Straus Conflict Tactics Scale, only two prosecutions may result.

The initial success of some innovative programmes for dealing with wife assault, established in various jurisdictions in the United States leads to the following suggestions to remedy this lack of criminal justice system response:

- policy be established for all criminal justice system components.

- attitude change and consciousness-raising be built into in-service training for all criminal justice system personnel, dealing specifically with issues of wife assaults.

- ex parte interim orders be made available on a 24-hour basis for assaulted wives.

- violation of peace bonds and injunctions be enforced by arrest without warrant.

- Crown prosecutors encourage assaulted women to proceed with charges.

- mandatory therapy be established for assaultive males, either as a condition for a stay of proceedings, a judge's disposition or part of a probation order.

- serious consideration be given to the issue of criminal versus family court as the better alternative for hearing wife assault cases.

A variety of comprehensive criminal justice system models is described in Chapter Four. The first of these creates specialist components in the criminal justice system to deal specifically with wife assault. Family dispute paraprofessionals to accompany police, an inter-agency management team to compile disparate data on assaultive families and a women's advocate service are some of the components described. Demonstration projects should be used to indicate the feasibility of such components and provide an empirical basis for future policy concerning the establishment of such models.

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RESEARCH APPENDIX

What Should be Done?

Some research directions are suggested by the current state of knowledge about the criminal justice system response to domestic violence. Clearly, more information is required to answer the following questions:

1. What is the best means of providing protection for women balanced against a realistic upper limit of the criminal justice system's capacity to provide leverage, criminal remedy, prosecution and conviction?
2. Do the criminal or the family courts provide the better alternative for providing the balance described in 1. above?
3. Is it possible to bring about effective, coordinated change when each element of the system blames other elements for the system's lack of effectiveness?

Before these can be answered, some preliminary research needs must be met. These include:

1. An Efficient Information System

It is ironic that, in an age when computer technology provides the capabilities for efficient information systems, that the criminal justice system in many localities does not have an efficient system for tracking the progression of cases from the point of primary police intervention to disposition. Coordination of dispatch records to police reports is difficult due to inconsistencies in police report writing (such as recording cases sometimes by the disputant's surname and at other times by the complainant's surname). Tracking police reports and subsequent warrants, is also difficult for similar reasons. Court records are, from the reports of these interviewed, in a similar disarray; and social agencies deal with the problem by not allowing researchers access to their files at all. Hence, what is needed before any major research is performed is:

- an improvement in information systems
- coordination of information systems
- a change in policy with social agencies so that research and evaluation are welcomed as providing a rational-empirical basis for policy planning.

2. Incidence Studies

At the present time no comprehensive survey of the incidence of domestic violence in Canada has been done. We know that the problem is immense but we do not know how to estimate local incidence on the basis of reported-unreported ratios. Such information is important in developing policies regarding emergency shelter. It would also be useful to know whether the likelihood of reporting domestic violence increases in areas where there has been more media publicity for support services than in some other cities and rural areas or whether reporting is a function of changes in police arrest policy. This information would be useful in future planning of media campaigns to publicize available police and social services. Some idea of the anticipated increase in the use of such service would be an aid in policy planning. Conversely, there is little use in broadcasting an advertisement nation-wide to areas where service gaps exist. Locally tailored ads might be more useful.

Such a survey might use face-to-face interview techniques and the Conflict Tactics Scale questions on domestic violence embedded in a more general survey on lifestyles such as the one used by Straus. Such a technique, it will be recalled, showed that 16.7% of a nationally representative sample reported a violent incident in the year preceding the study (Straus, et al., 1980).

A recent study by Lou Harris and associates in Kentucky used the Straus Conflict Tactics scale on a representative sample of 1,793 women (Schulman, 1979). In this study 10% of women surveyed reported spousal violence in the past twelve months. The discrepancy in rates may have been due to the telephone survey techniques in the Harris study. This relatively impersonal technique may have led to greater underreporting than in the Straus survey. Clearly, careful attention needs to be paid to the data collection technique for such a sensitive issue. Standardized forms which can aid in the collection of assault data from police, medical, social agency, transition houses and related services must be developed.

3. Police Procedure Studies

As outlined in the section on police, the clearest method of obtaining an assessment of current police procedures in handling domestic dispute calls would be to make a series of videotape vignettes which systematically vary the grounds for arrest (or the probability of cause for arrest). In establishing such stimulus materials, one could eliminate a large source of error in prior studies (for example, Loving and Farmer, 1980) where police describe what they do in general on domestic calls. These procedures are too vague and could be considerably tightened with set scenarios. Lawyers and members of concerned groups, could assist in the construction of the materials. It might be instructive to use these scenarios to find out what lawyers, Crown prosecutors, transition house workers, and legal aid workers, think the police should do in each situation depicted.

4. Policy and Procedure Studies of Justices of the Peace and Crown Prosecutors

A similar procedure could be used to establish the grounds that justices of the peace and Crown prosecutors use to decide to issue warrants, proceed with charges, etc. If serious attempts to change policy at each of these levels are made, the videotapes could then be used as teaching aids, so their use would not end with the completion of the study.

5. Court Studies

The issue of outcomes in criminal and family court could be studies in two ways: first, an archival study of the outcomes of matched cases (matched on the basis of severity, etc.) in the two courts and second, a court watch program to monitor current court procedure. Any proposed policy changes in the courts could also be monitored by such a procedure.

6. Tracking Study

The questions raised above are, to a certain extent, empirical questions. We cannot make policy until we know the outcomes of various strategies for dealing with the violence.

Such a study would track a set of families from the point of first contact with the criminal justice system. Long term follow up would be done on subsequent violence and other indicators of life dissatisfaction as a result of decisions made at a variety of points in the criminal justice system (eg., police arrest, mediation, removal from premises, referral to a social agency). A diagram of the tracks might include:

Time 1	Time 2	Time 3	Time 4
citizen request for service	police response:	criminal court	incarceration
	arrest	family court	therapy
	referral	agency 1	discharge
	mediation	agency 2	
	removal from premises		

7. Study of the Effects of Arrest vs. Mediation or Removal from Premises

Although the long term tracking study suggested above would provide the most comprehensive and realistic appraisal of policy-decision outcomes, some more circumscribed studies are also possible. For example, the effects of arrest on (1) subsequent violence in men and (2) the tendency of women to use the criminal justice system might be examined. In the first part of the study, police could randomly use (a) removal from premises, (b) mediation, and (c) arrest with one of the following; incarceration, therapy, or discharge to stimulate a variety of possible outcomes (each with policy implications). These would be applied to real incidents although only less serious ones (i.e., common assaults) could ethically be studied. Long term effects of the police actions on the male and on the couple could be studied. In addition, a question of interest is whether or not women would be more or less likely to use the police if they expected the police to arrest, remove the male temporarily, or mediate. Carefully structured questionnaires with battered women, augmented by systematic long term tracking study results should provide a requesite empirical basis for future policy decisions.